(15,423.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 284.

WILLIAM GRAY BROOKS, ADMINISTRATOR OF THE ESTATE OF HENRY GRAY, DECEASED, ET AL., PLAINTIFFS IN ERROR,

vs.

ROBERT CODMAN, ADMINISTRATOR, WITH THE WILL ANNEXED, OF THE ESTATE NOT ALREADY ADMINISTERED OF WILLIAM GRAY THE ELDER, ET AL.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF MASSACHUSETTS.

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1 UNITED STATES OF AMERICA, *ss:*

[Seal of the Circuit Court, Massachusetts.]

The President of the United States to the honorable the judges of the supreme judicial court of the Commonwealth of Massachusetts, holden at Boston, within and for the county of Suffolk, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme judicial court, before you or some of you, being the highest court of law or equity of the State of Massachusetts in which a decision could be had in the suit between Robert Codman, administrator, with the will annexed, of the estate not already administered of William Gray the elder, plaintiff, and William Gray Brooks, as administrator of the estate of Henry Gray, deceased; John C. Ropes, John C. Gray, and John L. Gardner, as executors of the estate of John C. Gray the elder, deceased; Russell Gray, administrator of the estate of Horace Gray the elder, deceased, and Alfred Bowditch, as administrator of the estate of Lucia Gray Swett, deceased, all of Boston, in said Commonwealth; William E. Coffin and William S. Bullard, both of said Boston, assignees of Horace Gray; Horace Gray and Ellen Gray, both of the city and State of New York; Francis C. Gray, Mary C. Gray, Samuel S. Gray, Reginald Gray, and Morris Gray, all of said Boston; Frances Elizabeth Gray, Caroline G. Haskins, both of said Boston; Charles Russell Gray, of Brattleboro', in the State of Vermont; Lydia F. Cornelius and Mary C. Wintrop, both of Cambridge, in said Commonwealth; Frederick William Gray, of said Brattleboro'; Arther Gray, of Walpole, in said Commonwealth; Frances Gray, of said Cambridge; Horatio Gray, of said Boston; Ellen C. Brooks, of said Boston; Horace Gray and Elizabeth C. Gray, both of said Boston, and Harriet Gray, of Wellesley, in said Commonwealth, and the said John C. Gray and Russell Gray, personally; Lucia G. Alexander, now sojourning in Florence, in the Kingdom of Italy; Charlotte B. W. Hallowell, of Medford, in said Commonwealth; Samuel Swett, of Portland, in the State of Maine; Elizabeth H. Swett, Lucia G. Swett, Mary C. Swett, and William L. Swett, of said Boston, and Elizabeth G. French, of Bristol, in the State of Rhode Island; Edward Gray and Isa E. Gray, both of Boston, in the county of Suffolk, executors of the will of William Gray, and the said Edward Gray, as administrator of the estate of William R. Gray and administrator, with the will annexed, of Francis C. Gray, defendants, in bill in equity for instructions, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of or authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the

Constitution or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the defendants William Gray Brooks, administrator as aforesaid; F. Elizabeth Gray, Ellen C. Brooks, Caroline G. Haskins, Horatio Gray, Lydia F. Cornelius, Mary C. Winthrop, Frances Gray, Arthur Gray, Frederick W. Gray, Charles Russell Gray, Alfred Bowditch, administrator as aforesaid, Lucia G. Alexander, Elizabeth H. Swett, Lucia G. Swett, Mary C. Swett, William L. Swett, Samuel Swett, Charlotte B. W. Hallowell, and Elizabeth G. French, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the thirtieth day of September, in the year of our Lord one thousand eight hundred and ninety-three.

ALEX. H. TROWBRIDGE,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by—
WALBRIDGE A. FIELD,
Chief Justice of Supreme Judicial Court of Massachusetts.

2 COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

And now here the judges of the supreme judicial court of the Commonwealth of Massachusetts make return of this writ by annexing hereto and sending herewith, under the seal of the said supreme judicial court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

Seal. Nulli vendemus nulli negabimus justitiam.

In testimony whereof I, John Noble, clerk of said supreme judicial court for said county of Suffolk, have hereto set my hand and the seal of said court this sixth day of October, A. D. 1893.

JOHN NOBLE, *Clerk.*

3 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

To all persons to whom these presents shall come, Greeting:

Know ye that among our records of our supreme judicial court, sitting at Boston, in said county of Suffolk, for the hearing of cases in equity from the first day of January, in the year of our Lord one thousand eight hundred and ninety-three, to the thirty-first day of December, in said year, both days inclusive, it is thus contained, the following being the entire record in the case:

4 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

Supreme Judicial Court. In Equity.

WILLIAM GRAY, Administrator, }
vs. }
WILLIAM GRAY BROOKS, Admin., *et al.* }

5 *Bill of Complaint.*

To the honorable the judges of the supreme judicial court, sitting in equity, within and for the county of Suffolk:

William Gray of Boston in the county of Suffolk and said Commonwealth, as administrator with the will annexed of the estate not already administered of William Gray the elder, late of said Boston, deceased, testate, brings this his bill against William Gray Brooks as administrator of the estate of Henry Gray, deceased, John C. Ropes, John C. Gray, and John L. Gardner as executors of the estate of John C. Gray the elder, deceased, Russell Gray, as administrator of the estate of Horace Gray the elder, deceased, and Alfred Bowditch, as administrator of the estate of Lucia Gray Swett, deceased, all of said Boston; and against William E. Coffin and William S. Bullard, both of said Boston, assignees as hereinafter described; and against Horace Gray and Ellen Gray, both of the city and State of New York, Francis C. Gray, Mary C. Gray, Samuel S. Gray, Reginald Gray, and Morris Gray, all of said Boston; and against Frances Elizabeth Gray, Caroline G. Haskins, both of said Boston, Charles Russell Gray of Brattleboro' in the State of Vermont, Lydia F. Cornelius and Mary C. Winthrop, both of Cambridge in this Commonwealth, Frederic William Gray of said Brattleboro', Arthur Gray of Walpole in this Commonwealth, Frances Gray of said Cambridge, Horatio Gray of said Boston, and Ellen C. Brooks of said Boston; and against Horace Gray and Elizabeth C. Gray, both of said Boston, and Harriet Gray of Wellesley in this Commonwealth, and the said John C. Gray and Russell Gray personally; and against Lucia G. Alexander, now sojourning in Florence in the Kingdom of Italy; Charlotte B. W. Hallowell of Medford in this Commonwealth, Samuel Swett of Portland in the State
6 of Maine, and Elizabeth H. Swett, Lucia G. Swett, Mary C. Swett, and William L. Swett, all of said Boston, and Elizabeth G. French of Bristol in the State of Rhode Island.

And thereupon your orator complains and says—

1. That on the seventeenth day of April in the year eighteen hundred and eighty-two your orator was duly appointed by the probate court for the said county of Suffolk administrator with the will annexed of the estate not already administered of William Gray the elder, late of said Boston, deceased, testate, and qualified as such administrator, which said will was proved and allowed by said court on the fourteenth day of November, A. D. 1825, as appears of record, and that your orator is still such administrator.

2. That the said William Gray the elder, while living, had valid claims to a large amount for indemnity arising out of illegal captures, detentions, seizures, condemnations, and confiscations committed by citizens of the French Republic prior to the ratification of the convention between the United States and the French Republic concluded on the thirtieth day of September in the year eighteen hundred, the ratifications of which were exchanged on the thirty-first day of July in the year eighteen hundred and one.

3. That your orator, as administrator as aforesaid, acting under an act of the Congress of the United States approved January twentieth, eighteen hundred and eighty-five, entitled "An act to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the thirty-first day of July, eighteen hundred and one," applied by petitions to the Court of Claims for an adjudication of such claims.

4. That the Court of Claims reported to Congress that your orator, as administrator as aforesaid, was entitled to indemnity upon fourteen of said claims, and as to other of said claims the petitions are still pending, some thereof in the Court of Claims and some awaiting the action of Congress.

5. That the Congress of the United States has passed an act, approved March 3, 1891, entitled "An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for the prior years, and for other purposes," by which act there were appropriated, among other sums, an aggregate sum of one hundred and twenty-two thousand nine hundred and eighty-three $\frac{3}{100}$ dollars ($122,983.03) to pay the findings of the Court of Claims upon the fourteen claims reported in favor of your orator as aforesaid, which sum has been paid over to your orator, and, after deducting so much thereof as is justly due to your orator for his services rendered and expenses incurred in securing the same, is now held by him as administrator as aforesaid, to be paid over as may be required by law.

6. And your orator further says, that in the act of Congress last above-named it is provided as follows; namely,—

"That in all cases where the original sufferers were adju-
7 dicated bankrupts, the awards shall be made on behalf of the next of kin instead of to assignees in bankruptcy, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made

represents the next of kin, and the courts which granted the administrations, respectively, shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards."

7. And your orator further says that he is in doubt how the said fund held by him should be distributed so as to satisfy the requirements of the act of Congress last above referred to, and the legal claims of those who may be entitled under the will of William Gray the elder.

8. That the said William Gray the elder was never adjudicated a bankrupt; that he died in November, 1825, leaving no widow surviving him, but leaving six children; namely, William R. Gray, who died July 28, 1831, intestate, of whose estate your orator is administrator; Henry Gray, who died December 1, 1854, intestate, of whose estate William Gray Brooks, one of the defendants, is administrator; Francis C. Gray the elder, who died December 29, 1856, testate, of whose estate your petitioner is executor; John C. Gray the elder, who died March 3, 1881, testate, of whose estate John C. Ropes, John C. Gray, and John L. Gardner, three of the defendants, are executors; Horace Gray the elder, who died July, 1873, intestate, of whose estate Russell Gray, one of the defendants, is administrator; and Lucia Gray Swett, who died in 1844, intestate, of whose estate Alfred Bowditch, one of the defendants, is administrator.

9. That by the will of said William Gray the elder, a certain specific bequest was made in favor of his daughter, the said Lucia Gray Swett, which bequest has since been fully satisfied, and the entire residue of his estate, including all interest in said claims which could be disposed of by his will, was devised and bequeathed to his five sons above named in equal shares.

10. That the said Henry Gray the elder, on July 21, 1829, for good consideration assigned to his four brothers, the said William R., Francis C., John C., and Horace, in equal shares, all his right, title, and interest in and to all notes, balances, claims, and demands, including all claims and demands on our own and on other governments still unsettled, to which he was or in any way might become entitled as one of the residuary legatees, or as one of the executors of said William Gray the elder, then deceased, or in any manner by or through him.

11. That on November 24, 1847, the said Horace Gray the elder assigned all property, including his interest in the estate of his father not then already divided, to William Minot, master in chancery, for the benefit of his creditors, and said Minot subsequently, on December 7, 1847, assigned the same to Robert Hooper,
8 William E. Coffin, and William S. Bullard upon the same trusts for the creditors of said Horace Gray, and the said Hooper having since died, the present assignees under said assignment are William E. Coffin and William S. Bullard, two of the defendants, who are now entitled to the property covered by said agreement, in order to carry out the trusts therein established and not yet fulfilled.

12. And your orator saith that the said executors of John C. Gray, deceased, and the said assignees of Horace Gray, deceased (with whose interests your orator's interests as administrator of the estate of William R. Gray, and executor of the will of Francis C. Gray, are in this regard identical), claim that by the true construction of the act of Congress last above referred to, the fund in your orator's hands is to be distributed as a part of the estate of said William Gray the elder which was disposed of by his will, and that by virtue of the provisions thereof, and of the assignments made as aforesaid, said fund should now be paid exclusively and in equal shares to the said representatives of William R., Francis C., John C., and the assignees aforesaid of said Horace; but the said administrator of the estate of Henry Gray and the said administrator of the estate of Lucia Gray Swett claim that by the true construction of said act the said fund should be paid to the next of kin of William Gray the elder, determined either as of the time of his death or as of the time of the approval of said act.

13. That the next of kin of said William Gray the elder, determined as of the time of his death, were his six children named above; that his next of kin determined as of the time of the approval of said act, are as follows, all being parties defendant in this proceeding, namely,—

1. The descendants of said William R. Gray, namely, his children, being your orator, Horace Gray of New York, and Ellen Gray, and the children of a deceased son, being Francis C. Gray, Mary C. Gray, Samuel S. Gray, Reginald Gray, and Morris Gray.

2. The descendants of said Henry the elder, being his children, Frances Elizabeth Gray, Caroline G. Haskins, Charles Russell Gray, Lydia F. Cornelius, Mary C. Winthrop, Frederick W. Gray, Arthur Gray, Frances Gray, Horatio Gray, and Ellen C. Brooks.

3. The descendants of Horace Gray, being his children, Horace Gray of Boston, Elizabeth C. Gray, Harriet Gray, John C. Gray, and Russell Gray.

4. The descendants of Lucia G. Swett, namely, her daughter Lucia G. Alexander, a daughter of a deceased son, Charlotte B. W. Hallowell, the children of another deceased son, being Samuel Swett, Elizabeth H. Swett, Lucia G. Swett, Mary C. Swett, and William L. Swett, and the daughter of another deceased son, Elizabeth G. French.

For another statement of the descendants of said William Gray your orator refers to the schedule hereto attached.

9 14. And your orator, being in doubt how the said fund should be distributed, prays the instruction and direction of this honorable court in the premises.

WILLIAM GRAY,
Administrator, with Will Annexed, of Wm. Gray the Elder,
By R. H. DANA, *Attorney.*

Filed January 9, 1892.

(Here follows genealogical table marked p. 10.)

11 This bill was filed and entered in said court on the ninth day of January, A. D. eighteen hundred and ninety-two, and thereupon a subpœna was issued as follows, to wit:

12 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss*:

To William Gray Brooks, administrator of the estate of Henry Gray, deceased; John C. Ropes, John C. Gray, and John [SEAL.] L. Gardner, executors of the estate of John C. Gray the elder, deceased; Russell Gray, administrator of the estate of Horace Gray the elder, deceased; Alfred Bowditch, administrator of the estate of Lucia Gray Swett, deceased, all of Boston, in said county of Suffolk; William E. Coffin and William S. Bullard, assignees, both of said Boston; Horace Gray and Ellen Gray, both of the city and State of New York; Francis C. Gray, Mary C. Gray, Samuel S. Gray, Reginald Gray, and Morris Gray, all of said Boston; Francis E. Gray and Caroline G. Haskins, both of said Boston; Charles Russell Gray, of Brattleboro, in the State of Vermont; Lydia F. Cornelius and Mary C. Winthrop, both of Cambridge, in said Commonwealth; Frederic William Gray, of said Brattleboro; Arthur Gray, of Walpole, in said Commonwealth; Francis Gray, of said Cambridge; Horatio Gray and Ellen C. Brooks, both of said Boston; Horace Gray and Elizabeth C. Gray, both of said Boston; Harriet Gray, of
13 Wellesley, in said Commonwealth; said John C. Gray and Russell Gray personally; Lucia G. Alexander, now sojourning in Florence, in the Kingdom of Italy; Charlotte B. W. Hallowell, of Medford, in said Commonwealth; Samuel Swett, of Portland, in the State of Maine; Elizabeth H. Swett, Lucia G. Swett, Mary C. Swett, and William L. Swett, all of said Boston, and Elizabeth G. French, of Bristol, in the State of Rhode Island, Greeting:

We command you that you appear before our supreme judicial court, at the rules to be holden at Boston, within our said county of Suffolk, on the first Monday of February next, then and there to answer to a bill of complaint exhibited against you in our said court by William Gray, of said Boston, administrator, with the will annexed, of the estate not already administered of William Gray the elder, late of said Boston, deceased, and to do and receive what our said court shall then and there consider in that behalf.

Hereof fail not, under the pains and penalties in the law in that behalf provided.

Witness Walbridge A. Field, Esquire, at Boston, the ninth day of January, in the year of our Lord one thousand eight hundred and ninety-two.

C. H. COOPER, *Ass't Clerk.*

14 On which subpœna are the following acceptances of service, to wit:

January, 1892.—Due service of the within subpœna is hereby acknowledged.

HORACE GRAY, *Of Boston,*
ELIZABETH C. GRAY,
HARRIET GRAY,
JOHN C. GRAY (*In His Private Capacity*),
RUSSELL GRAY (*In His Private Capacity*),
By JOHN C. GRAY, *Their Att'y.*
JOHN C. GRAY,
JOHN L. GARDNER AND
JOHN C. ROPES,
Executors of the Will of John C. Gray,
By JOHN C. ROPES, *Executor.*
ALFRED BOWDITCH,
Adm'r of the Estate of Lucia G. Swett,
LUCIA G. ALEXANDER,
CHARLOTTE B. W. HALLOWELL,
SAMUEL SWETT,
ELIZABETH H. SWETT,
LUCIA G. SWETT,
MARY C. SWETT,
WILLIAM L. SWETT AND
ELIZABETH C. FRENCH,
By W. G. RUSSELL, *Their Att'y.*
RUSSELL GRAY,
Adm'r of the Estate of Horace Gray (the Elder),
HORACE GRAY, *Of New York,*
ELLEN GRAY,
FRANCIS C. GRAY,
MARY C. GRAY,
SAMUEL S. GRAY,
REGINALD GRAY,
MORRIS GRAY AND
WILLIAM E. COFFIN,
WILLIAM S. BULLARD,
Assignees of Horace Gray, Deceased,
By J. B. WARNER, *Their Att'y.*
WILLIAM GRAY BROOKS,
Administrator of Henry Gray,
FRANCES ELIZABETH GRAY,
CAROLINE G. HASKINS,
CHARLES R. GRAY,
LYDIA F. CORNELIUS,
MARY C. WINTHROP,
FREDERIC W. GRAY,
ARTHUR GRAY,
FRANCIS GRAY,
HORATIO GRAY,
ELLEN C. BROOKS,
Per WILLIAM GRAY BROOKS, *Attorney.*

15 The plaintiff appeared by Richard H. Dana, Esquire, his attorney, and an appearance for the several defendants named below was entered on the filing of the bill, to wit:

SUFFOLK, *ss:*

Supreme Judicial Court, Jan'y 8, 1892.

WM. GRAY, Admin., Pl'ff,
v.
WM. GRAY BROOKS *et al.*, Adm., D'f't-. } No. 3747. Eq.

In the above action I appear for Francis C. Gray, Mary C. Gray, Samuel S. Gray, Reginald Gray, Morris Gray.

J. B. WARNER.

16 And on the eighteenth day of January aforesaid the following appearance for Russell Gray, administrator, was entered, to wit:

SUFFOLK, *ss:*

Supreme Judicial Court, Jan'y, 1892.

WM. GRAY, Pl'ff,
v.
WM. G. BROOKS *et al.*, D'f't-. } No. 3747. Eq.

In the above suit I appear for myself as administrator of the estate of Horace Gray.

RUSSELL GRAY.

17 And on said eighteenth day of January said Russell Gray, administrator, filed his answer as follows, to wit:

SUFFOLK, *ss:*

Supreme Judicial Court, January, 1892.

GRAY
v.
BROOKS *et al.* } In Equity.

The Answer of Russell Gray, Administrator of the Estate of Horace Gray the Elder, Late of Boston, Deceased, to the Bill of Complaint of William Gray.

18 This defendant in his capacity as administrator as aforesaid, not waiving any of his individual rights as one of the next of kin of William Gray the elder, deceased, or otherwise, for answer to the said bill saith that all the matters and things therein contained are true to the best of his knowledge, information, and belief; that as such administrator he claims nothing in the premises, save for the benefit of the assignees of his intestate's

estate as recited in said bill; and that he submits in all things to abide and perform such decrees as this honorable court shall make in the premises.

RUSSELL GRAY,
Administrator as Aforesaid.

19 And on the twenty-first day of said January the following appearance for the heirs of Henry Gray was entered, to wit:

SUFFOLK, *ss:*

Supreme Judicial Court, January 20th, 1893.

WILLIAM GRAY, Adm'r, Pl'ff,
v.
WILLIAM GRAY BROOKS, Adm'r, *et al.*, Def't. } No. 3747. Eq.

In the above action I appear for the heirs of Henry Gray as solicitor and counsel.

HARVEY D. HADLOCK,
5 Tremont St., Boston.

20 And on the thirtieth day of January aforesaid the following appearance for the several defendants named below was entered by J. B. Warner, Esquire, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

Supreme Judicial Court. In Equity.

WILLIAM GRAY, Admin.,
v.
WILLIAM GRAY BROOKS, Admin., *et al.*

I appear for the following parties:
William Gray, as admin. of estate of Wm. R. Gray; William Gray, as admin. of estate of Francis C. Gray, dec'd; John C. Ropes, John C. Gray, John L. Gardner, as administrators of the estate of John C. Gray, dec'd; William E. Coffin and William S. Bullard, as assignees of Horace Gray; William Gray in his private capacity, Francis H. Gray, Horace Gray, of New York; Ellen Gray, Francis C. Gray, Mary C. Gray, Samuel S. Gray, Reginald Gray, and Morris Gray.

J. B. WARNER.

21 And on said thirtieth day of January said defendants, Horace Gray, of Boston; Elizabeth C. Gray, Harriet Gray, John C. Gray, and Russell Gray, filed their answer as follows, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Supreme Judicial Court. In Equity.

GRAY
v.
BROOKS *et al.*

22 Answer of the defendants Horace Gray, Elizabeth C. Gray, Harriet Gray, John C. Gray, and Russell Gray, all of Boston.

The defendants Horace Gray, Elizabeth C. Gray, Harriet Gray, John C. Gray, and Russell Gray, all of Boston, make answer that the allegations in the bill are true to the best of their knowledge and belief, and they submit their rights to the decision of this honorable court.

By JOHN C. GRAY,
Their Solicitor.

23 And on the twelfth day of February, A. D. eighteen hundred and ninety-two, an appearance for William Gray Brooks, administrator, and other defendants severally named below was entered as follows, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Supreme Judicial Court. In Equity.

WILLIAM GRAY, Adm't'r,
vs.
WILLIAM GRAY BROOKS, Adm't'r, *et al.*

Please enter our appearance for William Gray Brooks, administrator of the estate of Henry Gray; also for F. Elizabeth Gray, Caroline Gray Haskins, Charles Russell Gray, Lydia Frances Cornelius, Mary Codman Winthrop, Frederic William Gray, Arthur Gray, Frances Gray, Horatio Gray, and Ellen Cordis Brooks, children and heirs-at-law of said Henry Gray.

February 12th, 1892.

BENJ. F. BUTLER, *Solicitor.*
WILLIAM GRAY BROOKS,
Adm'r, pro Se, Solicitor.

24 And on the twenty-fifth day of March, in said year eighteen hundred and ninety-two, the following suggestion of death of plaintiff and motion to appear and prosecute was filed by Robert Codman, administrator, to wit:

25 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Supreme Judicial Court. In Equity.

WILLIAM GRAY, Admin., *vs.* WILLIAM GRAY BROOKS *et al.*

Appearance of Robert Codman, Admin., to Prosecute This Cause.

And now comes Robert Codman, of Boston, and suggests that since the filing of the bill in this cause William Gray, who filed this bill as administrator, with the will annexed, of the estate not already administered of William Gray the elder, has died; and thereafter, on the twenty-first day of March current, the said Robert Codman was duly appointed by the probate court for the said county of Suffolk administrator, with the will annexed, of the estate not already administered of the said William Gray the elder.

And the said Robert Codman, administrator as aforesaid, now moves that he may be allowed to appear and prosecute this cause and prays the instruction and direction of this honorable court in the matters set forth in the bill of complaint.

ROBERT CODMAN.

26 On which motion is the following endorsement, to wit: Allowed.

And on the twenty-sixth day of said March said Robert Codman, administrator, filed his motion to amend the bill of complaint as follows, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Supreme Judicial Court. In Equity.

ROBERT CODMAN, Admin., *vs.* WILLIAM GRAY BROOKS *et al.*

27 *Amendment to Bill of Complaint.*

And now comes Robert Codman, administrator, &c., the present plaintiff in this cause, and says that, at the time of the filing of the bill of complaint in this cause, William Gray, who filed said bill as administrator with the will annexed of the estate not already administered of William Gray the elder, was also interested in the matters set forth in said bill and in the fund therein referred to, in his private capacity, and also in his capacity as administrator of the estate of William R. Gray, and as executor of the will of Francis C. Gray, as appears by the allegations in said bill of complaint.

That since the filing of said bill the said William Gray has died testate, and Edward Gray and Isa E. Gray, both of Boston in said county of Suffolk, have been appointed by the probate court of said Suffolk county the executors of his will, and the said Edward Gray has also been appointed by said probate court, in place of said William Gray, deceased, the administrator of the estate not already administered of the said William R. Gray, and also the administrator with the will annexed of the estate not already administered of the said Francis C. Gray.

And the plaintiff says that said executors of William Gray, the said administrator of William R. Gray, and the said administrator with the will annexed of Francis C. Gray, are necessary parties to this proceeding.

Wherefore the plaintiff prays leave to amend his bill by joining as parties defendant in this cause the said Edward Gray and Isa Gray, executors as aforesaid, and the said Edward Gray as administrator as aforesaid, and the said Edward Gray as administrator with the will annexed as aforesaid; and prays that a subpœna may be issued, directing them and each of them to appear and answer in the premises.

ROBERT CODMAN,
Administrator.

28 Upon which motion is the following endorsement, to wit: Mar. 26, 1892.—Allowed.

Thereupon, on said twenty-sixth day of March, a new subpœna was issued as follows, to wit:

29 COMMONWEALTH OF MASSACHUSETTS, } *ss:*
Suffolk, }

To Edward Gray and Isa E. Gray, both of Boston, in said county of Suffolk, executors of the will of William Gray, deceased; [SEAL.] said Edward Gray administrator of the estate not already administered of William R. Gray, deceased, and said Edward Gray administrator, with the will annexed, of the estate not already administered of Francis C. Gray, deceased, Greeting:

We command you that you appear before our supreme judicial court at the rules to be holden at Boston, within our said county of Suffolk, on the first Monday of May next, then and there to answer to a bill of complaint exhibited against you and others in our said court originally by said William Gray (now deceased), as administrator, with the will annexed, of the estate not already administered of William Gray the elder, late of said Boston, deceased, and now prosecuted by Robert Codman, of said Boston, as such administrator, and to do and receive what our said court shall then and there consider in that behalf.

30 Hereof fail not, under the pains and penalties in the law in that behalf provided.

Witness Walbridge A. Field, Esquire, at Boston, the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and ninety-two.

C. H. COOPER, *Ass't Clerk.*

On which subpœna is the following acceptance of service, to wit:

Due and sufficient service of the within subpœna is hereby acknowledged.

EDWARD GRAY,
ISA E. GRAY,
Executors of Wm. Gray,
EDWARD GRAY,
Admin. d. b. n. of Wm. R. Gray,
EDWARD GRAY,
Admin. cum. test. d. b. n. of Francis C. Gray,
By J. B. WARNER,
Their Attorney.

Mar. 26, 1892.

31 And on the twelfth day of September, A. D. eighteen hundred and ninety-two, said William Gray Brooks, administrator, and others, filed their answer, which was afterwards withdrawn by agreement of parties, and a substituted answer was filed on the nineteenth day of October, in said year, as of said twelfth day of September; on which substituted answer is endorsed said agreement of parties in the words following, to wit:

This answer may be filed as of the date of the former answer, Sept. 12th, and the latter withdrawn.

J. B. WARNER,
For Certain Def'ts.
R. H. DANA,
Att'y for Robert Codman, Adm'r.

32 And said substituted answer is in the words following, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Supreme Judicial Court. In Equity.

ROBERT CODMAN, Administrator,
vs.
WILLIAM GRAY BROOKS, Adm'r, *et al.*

33 Answer of William Gray Brooks, against whom this bill is brought as administrator of the estate of Henry Gray, deceased, who appears for himself and Ellen C. Brooks, the daughter of said Henry Gray, and next of kin to William Gray (the elder of that name), and F. Elizabeth Gray, Caroline Gray Haskins, Charles Russell Gray, Lydia F. Cornelius, Mary Codman Winthrop, Frederick William Gray, Arthur Gray, Frances Gray, and Horatio Gray, all next of kin of said William Gray (the elder) through said Henry Gray, the son of said William Gray, deceased.

1. And said defendants each for himself or herself answers said bill of complaint, and admits paragraph one of said bill.

2. And said defendants each for himself or herself answers said bill of complaint, and admits paragraph two of said bill.

3. And the third paragraph of said bill the said defendants admit the allegations therein stated.

4. As to paragraph four of the said bill, the defendants admit the same.

34 5. As to paragraph five of said bill, the defendants answering each for themselves deny, and call upon the complainant to prove the same.

6. As to paragraph six of said bill, the defendants answering each for themselves admit the same.

7. As to paragraph seven the defendants admit that the act of Congress therein mentioned was passed, and is to be construed according to its legal tenor and effect.

The defendants deny that there is any legal doubt or cause shown in said bill as to whether said claims passed to the next of kin, and not according to any legacy under any will whatsoever affecting any estate; but said defendants admit that said spoliation claims allowed by said court should be distributed to the next of kin and their personal representatives, if deceased.

8. As to paragraph eight, the defendants admit the same.

9. As to paragraph nine, the defendants admit the allegations thereof.

10. And these defendants further answering say, that said Francis C. Gray the elder died December 29, 1856, and said John C. Gray the elder died March 3, 1881, never having had any issue.

11. And said defendants answer each for themselves unto paragraph ten, and deny that on the twenty-first day of July, 1829, or on any other date, Henry Gray, the son of William Gray the elder, for a good and valuable consideration made and executed any assignment to his four brothers, William R., Francis C., John C.,

and Horace, or either of them, all his right, title, and interest in and to all notes, balances, claims, and demands on our own Government or upon any other governments, still unsettled to which he was or in any manner might become entitled to as one of the residuary legatees, or as one of the heirs-at-law of said William Gray the elder, deceased.

12. And said defendants each for themselves allege and declare that said paper-writing set out in said paragraph ten of said bill, if made by said Henry Gray, which each of these defendants for himself denies and leaves the plaintiff to prove the same, was made as a matter of form to enable his co-executors to show apparently that they had settled said estate, and to enable them to represent said estate in claiming against the United States the amounts due thereunto for said losses and spoliations, and for no other consideration or purpose whatever.

13. And said defendants, the next of kin of William Gray the elder, deceased, further allege and declare that said William Gray died November 5, 1825, leaving a very large estate, both real and personal, of the most varied and complicated character, a large portion of it widely scattered in many parts of the world. That he appointed his sons, William R., Henry, Francis C., John C., and Horace, his executors, each and all of them being of full age. That he had in his lifetime given money to his said sons in very considerable amounts to enable them to take up business. That in and by his last will he had made his said sons residuary legatees, share and share alike, as will appear by said will, a copy of which at the trial will be produced.

14. Said will was admitted to probate in the county of Suffolk on the fourteenth day of November, 1825, and said sons were duly qualified as executors of said will on the fourteenth day of said November.

15. That the estate of said William Gray, senior, deceased, exceeded in value the sum of two million dollars. That the administration of his said estate, as far as it was administered, was carried on by four of the brothers, Henry taking substantially no part; that no inventory of the estate was ever filed; that no appraisement thereof was ever made by any appraisers appointed by the court and filed in said court, nor any information whatever placed in that court as to the value or worth of said estate.

16. And the respondents further allege, that there has been no settlement or return of said estate ever made or filed in the probate court by said executors, or either of them, or by any administrator *de bonis non* of said estate, so that said estate remains wholly unsettled and unliquidated; and that upon a due settlement of said estate large balances will be found due to said Henry Gray and his next of kin over and above any moneys paid him by said executors on account of his legal share of said estate.

17. And said respondents further allege, that on the thirtieth day of September, 1828, a schedule was made by said four executors of the amount and value of the estate of said William Gray, then claimed by the four executors unsettled and unliquidated, in which

all the remaining assets of said estate, as they claim, were set forth, amounting to the sum of $155,000 only. That in and by said schedule the claims of said estate against several foreign governments for spoliations and losses by said William Gray during his lifetime, were valued at the sum of one thousand dollars only, and a dividend of the remainder of the assets of said estate, as shown by such schedule, was made by said executors between themselves and said Henry Gray upon such valuation of said estate, including such claims for spoliation and losses, to the amount of thirty-one thousand dollars, was charged to said Henry Gray as his share thereof; whereas, in truth and in fact, said claims for spoliations and losses were of very much greater value, to wit, the value of $861,870.00, of which sum they and William Gray, the administrator *de bonis non*, have received certificates of award from the United States to the amount and value of $600,045.69, much of which was received shortly after such pretended settlement, no part of which has ever been paid over to said Henry Gray, his administrators or his next of kin, and the balance of said first-mentioned amount now remains in the Treasury of the United States. A portion of said amount received by said executors was paid after May 1, 1849, at which date John C. Gray,
one of the executors, applied to said Henry Gray for a letter
36 of appointment of William Gray, late administrator *de bonis non*, and by whom this suit was originally brought, to represent him, the said Henry Gray, and act for him in the collection of said claims for losses and spoliations; and said appointment was made and has never been revoked save by the death of said Henry Gray, and was acted upon by said William Gray before Henry's death. But no part of the large sums of money received, including the money which is sought in this suit, has been paid over by said William Gray, administrator *de bonis non*, but he claims to hold the same as his own property, or as that of himself or the representatives of the co-legatees of John C. Gray the elder, in the estate of William Gray the elder, deceased, except Henry Gray.

18. And said respondents further answering, allege that in said pretended division of September 30, 1828, large sums of money were improperly and wrongfully charged to said Henry Gray, and mistakes made in said accounts amounting to large sums, to wit, of the amount of $75,000; and claims brought against him which were not due from him as residuary legatee, and losses in settling said estate in excess of any proportion of said Henry Gray were set forth and charged to him, as will in part appear by the books of said executors.

19. Wherefore said respondents further allege and declare that whether a division of this property shall be made to the legatees or next of kin of William Gray the elder, true it is that a large sum is due upon the decision of the case to said Henry Gray and his administrator and next of kin. And said respondents pray the court to refer this cause to a master to examine said accounts and adjust them according to law, equity, and good conscience, and report to this court the exact state of said accounts, so that the court may de-

termine the questions of equity and justice between the parties upon said report.

20. And the aforesaid respondents claim that all the facts involved in this controversy concerning property should be heard and tried by a jury, as is their sacred right, in such manner and upon such issues as the court shall order.

21. And said respondents further answering, deny that any legal and valid assignment of claims for losses of the character of said claims hereinbefore described can be assigned, so that such assignment shall be valid in law, especially claims against the United States under the law, and the several acts of Congress passed in that behalf. So that if said assignment shall be sustained as an instrument of conveyance affecting property, the same is invalid under the law and the statutes of the United States passed in that behalf.

22. And the respondents aforesaid, the next of kin of William Gray the elder, are advised that they are not concerned in the matters contained in the eleventh and the following paragraphs of said bill, as they concern the distribution of said funds among the heirs of the other legatees of said William Gray; and therefore make no further answer thereto.

23. And the respondents aforesaid further claim and move
37 the court here that all the money received by said William Gray, administrator *de bonis non*, for or on account of these spoliations, shall be paid into court, or into the hands of the present administrator *de bonis non*, so that the proper distribution of the same may be fully adjudicated by this court.

WILLIAM GRAY BROOKS,
Administrator de bonis non of Estate of Henry Gray.
F. ELIZABETH GRAY.
ELLEN C. BROOKS.
LYDIA F. CORNELIUS.
MARY CODMAN WINTHROP.
FRANCES GRAY.
CAROLINE GRAY HASKINS.
HORATIO GRAY.
ARTHUR GRAY.
FREDERICK W. GRAY.
CHARLES RUSSELL GRAY.

BENJ. F. BUTLER,
Solicitor and of Counsel.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

BOSTON, *October* 4, 1892.

Then personally came before me William Gray Brooks, to me personally known, who signed the foregoing answer, who, being by me duly sworn, did depose and say that he had read the said answer by him subscribed, and knew the contents thereof, and that the same is true of his own knowledge, except as to matters which

are therein stated to be on information and belief; and as to these matters, he believes it to be true. T. E. MAJOR,
Justice of the Peace.

38 And on the fifth day of November, A. D., eighteen hundred and ninety-two, John C. Gray, John L. Gardner, and John C. Ropes, executors of the will of John C. Gray, deceased, filed their answer as follows, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Supreme Judicial Court. In Equity.

GRAY
v.
BROOKS *et al.*

Answer of the Defendants, John C. Gray, John L. Gardner, and John C. Ropes, Executors of the Will of John C. Gray, Deceased.

39 The defendants, John C. Gray, John L. Gardner, and John C. Ropes, as they are executors of the will of John C. Gray, deceased, make answer that the allegations in the bill are true to the best of their knowledge and belief; and they submit their rights to the decision of this honorable court.

By J. B. WARNER,
Their Solicitor.

40 And on the twelfth day of November aforesaid Edward Gray, administrator aforesaid; William E. Coffin and William S. Bullard, as assignees of Horace Gray the elder, deceased, and Edward Gray and Isa E. Gray, as executors of the will of William Gray the younger, deceased, filed their answer as follows, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Supreme Judicial Court. In Equity.

ROBERT CODMAN, Administrator, etc.,
v.
WILLIAM GRAY BROOKS *et al.*

41 Answer of Edward Gray as administrator of the estate not already administered of William R. Gray, also as administrator with the will annexed of the estate not already administered of Francis C. Gray the elder, deceased; William E. Coffin and William S. Bullard as assignees of Horace Gray the elder, deceased, under the assigment referred to in the bill of complaint; and Edward Gray and Isa E. Gray as executors of the will of William Gray the younger, deceased since the filing of the original bill of complaint in this cause.

These defendants, severally answering, admit all the allegations

in the said bill of complaint contained, and further allege that they are true.

And further answering, these defendants severally say that, by the true construction and intent of the acts of Congress referred to in said bill, the proceeds of the said French spoliations claims, which the plaintiff holds, should be held and paid over by him in his capacity of administrator with the will annexed of the estate not already administered of William Gray the elder, and as a part of the residue said estate disposed of by said will, a copy of which will is hereto annexed marked Exhibit A.

And these defendants further answering say, that by the
42 assignment which is referred to in the tenth paragraph of said bill of complaint, and of which a copy is hereto attached marked Exhibit B, the said Henry Gray assigned to his four brothers, William R. Gray, Francis C. Gray, John C. Gray, and Horace Gray, his interest in the assets then undistributed of said William Gray the elder, among which were the claims for losses growing out of the French spoliations, as is expressly set forth in the schedules referred to in said assignment, which schedules these defendants will produce whenever directed by this honorable court; and the defendants say that whatever interest said Henry Gray at any time had, or his estate after his death might have had, in said claims passed by said assignment to his four brothers, and the share which the said Henry Gray or his representatives would have had in the funds in the plaintiff's hands, should be paid over in equal shares to the representatives of said William R. Gray, Francis C. Gray, and John C. Gray, and the assignees under the assignment of Horace Gray referred to in the eleventh paragraph of said bill of complaint.

EDWARD GRAY,
Administrator, &c.;
W. E. COFFIN,
W. S. BULLARD, *Assignees;*
EDWARD GRAY,
ISA E. GRAY, *Executors,*
By J. B. WARNER, *Solicitor.*

Filed November 12, 1892.

SCHEDULE A.

I, William Gray, of the city of Boston in the county of Suffolk, Commonwealth of Massachusetts, make this my last will and testament.

1st. I appoint my five sons, William R., Henry, Francis C., John C., and Horace, or the survivor of them, my executors.

2d. I give each of my sons above named one hundred thousand dollars already delivered them.

3d. I give to my daughter Lucia the fifty thousand dollars already delivered to her husband, Samuel Swett Esq. and the house on Hancock street in which they now live and is already conveyed to her. I also give to my said daughter the interest of fifty thou-

sand dollars, from the time of my decease, during her natu-
43 ral life, and at her decease the principal to be equally di-
vided among her children William G. Samuel B. Louisa Eliza and John B. or the survivor of them at her decease.

4th. If at the time of my decease any one of my sons should be so situated as that in the opinion of my said executors I should have desire to make further provisions for him and his family I will that my executors aforesaid cause a sum not exceeding fifty thousand dollars to be invested in such funds as they think proper, the income to be appropriated to the use of such son, during his life and at his decease to be equally divided among his children.

5th. I give the whole residue of my estate real personal and mixed to my five sons in equal proportions, William R. Henry, Francis C. John C. and Horace.

To this my last will and testament I have hereunto put my hand and seal this tenth day of July A. D. eighteen hundred and twenty-four.

WILLIAM GRAY.

BOSTON, *July* 10, 1824.

The above instrument was signed sealed and published and declared by the said William Gray as his last will and testament in the presence of us, who at his request and in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

SAMUEL DOW, JR.
JEREMIAH KAHLER, JR.
CHARLES JONES.

SCHEDULE B.

This indenture made this twenty-first day of July, in the year of our Lord, one thousand eight hundred and twenty-nine, by and between William R. Gray, Francis C. Gray, John C. Gray, and Horace Gray, of Boston, Esquires, of the one part, and Henry Gray, of Roxbury, Esquire, of the other part, witnesseth:

That whereas, the parties hereto were executors and residuary legatees under the will of the late William Gray, of Boston, Esquire; and whereas, on a final settlement of accounts by said executors on the 30th of September last, it appeared that there was due from said Henry Gray to said executors the sum of one hundred and eighty-nine thousand, three hundred and sixty-eight dollars and forty-two cents, which sum was then transferred, in four equal portions, to the several accounts of the parties of the first part, making a balance due from the said Henry, to each of them, of forty-seven thousand three hundred and forty-two dollars, and ten cents, which sums, with interest thereon, are still due and unpaid. And whereas
44 there were and are certain notes, balances and other demands due to said executors yet uncollected, and certain real and personal property of said William Gray's estate not all finally distributed, and certain claims and demands on our own and other

governments still unsettled, all which were intended to be truly described in certain schedules marked A. B. C. D. E. F. and G. annexed to said accounts, and were therein valued for settlement at one hundred fifty-five thousand dollars, which amount was passed to the several accounts of the five residuary legatees, in equal portions, being a sum of thirty-one thousand dollars to each, it being understood and agreed that the portion of said Henry and the proceeds thereof should be assigned and applied towards the payment of the balances aforesaid, and sundry conveyances having been made accordingly, now therefore, I the said Henry Gray, on execution of said agreement and understanding, and in satisfaction of the balances aforesaid, do hereby assign, transfer, release and convey to the parties of the first part, in equal portions, all my right, title and interest in and to all notes, balances, claims and demands, and all other property real and personal mentioned in the said schedules, and all not therein mentioned, if any such there be, to which I am or may become in any way entitled as one of the residuary legatees, or one of the executors of said William Gray, or in any manner by or through him. And I do thereby release and discharge the parties of the first part. and each of them from all obligation and accountability to me for the said property and proceeds thereof; and do covenant to execute any further assurances proper to carry into effect the true intent of these presents. And we the said William R. Gray, Francis C. Gray, John C. Gray, and Horace Gray in consideration of the said agreement, release and transfer do each of us severally hereby release and discharge the said Henry Gray from the balance aforesaid of forty-seven thousand three hundred and forty-two dollars and ten cents, with the interest due thereon.

In testimony of all which the said parties have hereunto set their hands and seals to this indenture, executed on triplicate the day and year first above written.

HENRY GRAY.
W. R. GRAY.
F. C. GRAY.
JOHN C. GRAY.
HORACE GRAY.

Signed, sealed and delivered in presence of—

NAT. FRANCIS.
WARD H. BLACKLER.

45 And on the first day of December, A. D. eighteen hundred and ninety-two, Horace Gray, of New York; Ellen Gray, Francis C. Gray, Mary C. Gray, Samuel S. Gray, Reginald Gray, and Morris Gray filed their answer as follows, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss*:

Supreme Judicial Court. In Equity.

GRAY
v.
BROOKS *et al.*

46 Answer of the defendants Horace Gray and Ellen Gray, both of New York, and Francis C. Gray, Mary C. Gray, Samuel S. Gray, Reginald Gray, and Morris Gray, all of Boston.

The said defendants Horace Gray, Ellen Gray, Francis C. Gray, Mary C. Gray, Samuel S. Gray, Reginald Gray and Morris Gray make answer that the allegations in the bill are true to the best of their knowledge and belief, and they submit their rights to the decision of this honorable court.

HORACE GRAY.
ELLEN GRAY.
FRANCIS C. GRAY.
MARY C. GRAY.
SAMUEL S. GRAY.
REGINALD GRAY.
MORRIS GRAY.

47 And on the thirtieth day of January, A. D. eighteen hundred and ninety-three, the following motion for issues to jury was filed, to wit:

48 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss*:

Supreme Judicial Court. In Equity.

WILLIAM GRAY, Adm'r,
vs.
WILLIAM GRAY BROOKS, Adm'r, *et al.*

To J. B. Warner, Esquire; William G. Russell, Esquire; Richard H. Dana, Esquire.

SIRS: Please take notice, and notice is hereby given to each of you, that on Tuesday next, at nine o'clock and thirty minutes in the forenoon of that day, or so soon thereafter as counsel may be heard, I shall move the court aforesaid, sitting in equity in the old courthouse, in Court square, in the city of Boston, in said county of Suffolk, to direct that issues of fact in the above-entitled cause be framed and submitted to a jury for their finding thereon.

49 And I herewith annex hereto as a part of this notice a copy of said motion for the purposes aforesaid, and also a copy of the issues of fact to be proposed and submitted to said court.

Respectfully your ob't servant,

HARVEY D. HADLOCK,
Solicitor and Counsel for William Gray Brooks, Adm'r, et al.

Dated at Boston, Jan'y 28, 1893.

50 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Supreme Judicial Court. In Equity.

WILLIAM GRAY, Adm'r,
vs.
WILLIAM GRAY BROOKS, Adm'r, *et al.*

Motion for Trial by Jury.

And now comes the respondent William Gray Brooks, administrator, *et al.*, and moves this honorable court to direct that issues of fact in the above-entitled cause be framed, and that said issues, when framed, be submitted to a jury of this court for their finding thereon or that said issues of fact may be passed upon by a jury legally authorized to pass upon the same in accordance with the practice of this court in equity.

HARVEY D. HADLOCK,
Solicitor and Counsel for William Gray Brooks, Adm'r, et al.

51 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Supreme Judicial Court. In Equity.

WILLIAM GRAY, Adm'r,
vs.
WILLIAM GRAY BROOKS, Adm'r, *et al.*

And now, after hearing the parties, it is ordered that issues be framed in the case for the purpose of submitting to a jury the following questions:

1. Was the rate of interest charged Henry Gray by his brothers and co-executors of the estate of William Gray on the note dated Nov. 14th, 1822, which Henry Gray had given to his father, William Gray, above the legal rate?

2. Was the value placed upon the estate of William Gray in 1828 by his executors a just and adequate value at the time when made?

3. Were the accounts of the executors of the estate of William Gray kept in such a manner as to deceive Henry Gray?

4. Was Henry Gray misled by reason of false and improper entries made in the accounts of the executors of William
52 Gray as to the amount due from him to his father's estate?

5. Did Henry Gray make an assignment of his interest in the residue of his father's estate with full knowledge as to its value and his interest therein?

6. Was the assignment claimed to have been made by said Henry Gray to his co-executors and residuary legatees received by them acting under a mistake as to the value of his father's estate and the amount of his interest therein?

7. Were the notes of William Gray to his sons William R. Gray, Francis C. Gray, John C. Gray, and Horace Gray, dated on or about August, 1825, for thirty thousand dollars each, in addition to the one hundred thousand dollars advanced to each of them, as stated in his will, given as an advancement and for the purpose of making the amount advanced to them equal to the amount advanced to Henry Gray, including the thirty-one thousand two hundred fifty-eight dollars and sixty-four cents for which he, William Gray, held the note of said Henry Gray, dated November 14th, 1822?

8. Was the transfer of six hundred shares of the Boston and Roxbury Mill corporation by Henry Gray to William R. Gray, Francis C. Gray, John C. Gray, and Horace Gray, his co-executors
52*a* under the will of William Gray, for the sum of fifteen thousand dollars less than its then market value; and, if so, what was the market value of said stock at the time of its transfer as aforesaid?

9. What was the amount of Henry Gray's indebtedness to the estate of his father, William Gray, on the 8th day of October, 1828?

10. What was the value of the estate of William Gray at the time of his decease?

11. What did the charge of $13,322.70 charged Dec. 30th, 1826, in the executors' books as interest grow out of and what transaction was it based upon?

12. What was the amount of Henry Gray's indebtedness to the estate of his father, William Gray, on the 21st day of July, 1829?

13. What was the value of the estate of William Gray, deceased, on the 8th day of October, 1828?

14. Was Henry Gray's mental condition such as to enable him to transact business understandingly during the period from January, 1828, to January, 1830?

The above issues are to be framed by the counsel and submitted to the court for approval on or before the — —— next, on which day a further order will be passed for the trial thereof.

53 On which motion is the following endorsement, to wit:

January 30th, 1893.—Service of the within by copy admitted.

And the following acceptances of service are also endorsed on said motion, to wit:

W. G. RUSSELL,
Att'y for Sundry Respondents.

Jan'y 30th.

J. B. Warner:

(Motion to be contested. I cannot be ready on Tuesday, Jan'y 31, but will be ready later in the week if desired.)

Jan. 30.

R. H. DANA, *Att'y.*

(With same as J. B. W.)

54 And on the thirty-first day of January last aforesaid Alfred Bowditch, administrator; Lucia G. Alexander, Charlotte B.

W. Hallowell, Samuel Swett, Elizabeth H. Swett, Lucia G. Swett, Mary C. Swett, William L. Swett, and Elizabeth G. French filed their answer as follows, to wit:

COMMONWEALTH OF MASSACHUSETTS:

ROBERT CODMAN, Administrator,
vs.
WILLIAM GRAY BROOKS, Executor, *et al.*

Answer of Alfred Bowditch, administrator; Lucia G. Alexander, Charlotte B. W. Hallowell, Samuel Swett, Elizabeth H. Swett, Lucia G. Swett, Mary C. Swett, William L. Swett, and Elizabeth G. French.

55 These defendants admit the averments of the plaintiff's bill of complaint except as hereinafter stated.

They say that said William Gray the elder was the owner of various vessels and cargoes which were captured by the French and condemned by their tribunals prior to the year 1800; that the claims made upon the Government of the United States on account of this and other losses, known as the "French spoliations," were referred to the United States Court of Claims by the act of Congress of January 20, 1885, and a copy of the report made by the court upon one of said claims is hereto annexed marked A, and made a part hereof. The reports in the other cases are of like effect. These defendants admit the facts stated in said report as "conclusions of fact," but they do not admit that the said claims of William Gray were valid as against either the French government or the Government of the United States, except as such validity may appear from the facts so reported.

The defendants admit that, by the act of March 3, 1891, Congress appropriated $122,983.03 to pay the findings of the Court of Claims upon the fourteen claims reported in favor of the plaintiff; but they say that the plaintiff did not receive said sum, nor any part thereof, until the Court of Claims, pursuant to said act, had certified that the plaintiff represented the next of kin of said William Gray. And they say that the plaintiff now hold said moneys as the representative of and trustee for said next of kin and not otherwise.

These defendants say that, as the next of kin of said William Gray at the time of the passage of the act, they are entitled, by right of representation under the laws of Massachusetts, to the following fractional parts of the fund now held by the plaintiff as aforesaid:

The defendants Lucia G. Alexander, Charlotte B. W. Hallowell, Elizabeth G. French, claim each one sixteenth part of the entire fund.

56 The defendants, Samuel, Elizabeth H., Lucia G., Mary C., and William L. Swett, all children of the late Samuel B. Swett, claim each one-eightieth part of the entire fund.

These defendants say that, as representing the right of their ancestor Lucia G. Swett, one of the children and next of kin of said William Gray, ascertained at the time of his death, they are entitled

by right of representation under the laws of Massachusetts to the following fractional parts of the fund now held by the plaintiff as aforesaid:

The defendants Lucia G. Alexander, Charlotte B. W. Hallowell, and Elizabeth G. French are entitled each to one twenty-fourth part of the entire fund.

The defendants Samuel, Elizabeth H., Lucia G., Mary C., and William L. Swett, children of the late Samuel B. Swett, are entitled each to one one hundred and twentieth part of the entire fund.

*(And that the said shares of said defendants, amounting in all to one sixth part of said entire fund, should be paid to the defendant Alfred Bowditch, as administrator of the estate of their ancestor Lucia G. Swett.)

W. G. RUSSELL,
Counsel for Defendants Named.

A.

Claimant.

Case No. 9, William Gray, administrator with the will annexed of the estate not already administered of William Gray, deceased, testate.

Conclusions of Fact.

This case was tried before the Court of Claims on the fifteenth day of November, 1888. The claimant was represented by William Gray, Esq., and the United States, defendants, by the Attorney General, through his assistant in the Department of Justice, Benjamin Wilson, Esq., with whom was assistant — general Robert A. Howard.

The court upon the evidence, and after hearing the arguments and considering same with the briefs of counsel on each side, determined the facts to be as follows:

I.

William Gray, Jr., a citizen of the United States, was owner of the brig "Minerva," a registered vessel of the United States measuring 114 tons and 79 feet.

II.

57 Said Gray was owner of the cargo which is hereinafter described, and which was on board of said brig during the voyage hereinafter described. In addition there was some small private ventures on the vessel for which no claim has been presented to this court.

III.

Said brig, laden with codfish, mackerel, beans, butter, salmon shooks, hoops, horses, and mules, sailed on a commercial voyage

*See amendment of March 18, 1893, *post*.

from Salem, Mass., to the West Indies in September, 1798, under instructions to proceed to Martinique, there to sell cargo, purchase molasses, and to return to such port in the United States as the master might think most for the owner's interest.

IV.

During said voyage the brig was captured by a French privateer, and condemned at Guadaloupe as a prize, upon the following grounds:

"Whereas no list of the crew can be found nor a manifest signed by competent authorities;

"Whereas said brig Minerva was sent from Salem to Martinique, a colony given up to the English, occupied and defended by the rebels:

"In applying article XII. of the regulations of October 21, 1744, which says, 'Will be good prize all foreign vessels, &c., or which have not on board the list of the crew as prescribed and issued by the public authorities of the neutral ports from which said vessels have sailed:'

"The decree of the special agents of the executive directory in the Windward islands of the 13th of Pluviose, year 5, article 1. The government vessels and the French privateers are authorized to seize and to take to the ports of the Republic the neutral vessels bound for the Windward and Leeward islands of America, which are given up to the English, and are occupied and defended by the emigrants.

"These ports are Martinique, St. Lucia, Tabago, &c."

As a consequence of this decree, the vessel and cargo became a total loss to the owners.

This court has already found that the grounds stated by the prize tribunal do not furnish valid reasons for condemnation. (Gray *v.* U. S., 21 C. Cls. 430; Cushing *v.* U. S., 22 C. Cls. 1; and Hooper *v.* U. S., 22 C. Cls. 408.)

V.

The value of Gray's share of the cargo was	$3,752 61
Two-thirds of the freight was worth	1,666 67
The value of the brig at time of loss was	5,000 00

Said claim was not embraced in the convention between the United States and the Republic of France concluded on the
58 thirtieth of April, 1803. It was not a claim growing out of the acts of France allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain concluded on the twenty-second of February, 1819, and was not allowed in whole or in part under the provisions of the treaty between the United States and France of the fourth of July, 1831.

The claimant, in his representative capacity, is the owner of said claim, which has never been assigned except as aforesaid.

Conclusions of Law.

The court decides, as conclusions of law, that said seizure and condemnation were illegal, and the owners and insurers had valid claims of indemnity therefor upon the French government prior to the ratification of the convention between the United States and the French Republic concluded on the thirtieth day of September, 1800; that said claim was relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States; and that the claimant is entitled to the following sums from the United States:

William Gray, administrator as aforesaid, to the sum of $10,419.28.

BY THE COURT.

59 And on the first day of February, A. D. eighteen hundred and ninety-three, it was ordered by the court that the motion for issues to jury filed January 30, 1893, be, and the same was, denied.

And at a hearing on the twenty-eighth day of February, aforesaid, the case was reported by the justice who presided at the hearing for the consideration of the full court upon certain questions of law reserved in said report.

Whereupon, on the second day of March, A. D. eighteen hundred and ninety-three, the defendants, William Gray Brooks, administrator, and others, by Harvey D. Hadlock, Esquire, their attorney, alleged sundry exceptions to the ruling and opinion of the court in certain matters of law, and the same having been reduced to writing, were as follows, to wit:

60 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Supreme Judicial Court. In Equity.

WILLIAM GRAY, Adm'r,
vs.
WILLIAM GRAY BROOKS, Adm'r, *et als.*

Respondents' Exceptions.

This cause was a bill for instructions brought by William Gray (administrator *de bonis non* of the estate of William Gray the elder, who died in 1825), asking the decree of the court to determine to whom certain awards paid by the Government of the United States to the estate of said William Gray the elder, for losses and spoliations committed by citizens of the French Republic prior to 1801, should be paid.

The facts in the cause are set forth in the pleadings and in the report of the evidence embraced in the report of the justice before

whom the cause was heard and which, so far as material, is made a part of this bill of exceptions.

61 At the hearing of the cause before the justice, evidence was introduced by the respondent William Gray Brooks for the purpose of showing that a certain written instrument purporting to be an assignment from Henry Gray to his four brothers, William R. Gray, Francis C. Gray, John C. Gray, and Horace Gray, ought to be set aside; said evidence was admitted by the justice *de bene*.

The respondents, William Gray Brooks and others, requested the justice to report the entire case to the full court, but upon the request of the complainant the court made certain findings and rulings and at the request of the said respondents reported the evidence taken before him at the trial of the cause.

The justice in his report ruled that, on the evidence offered and on the other facts as stated, said respondents have shown no ground for setting aside the written instrument of July 21, 1829, purporting to be an assignment from Henry Gray or disturbing the accounts or valuations made by the parties in 1828 or 1829.

To this ruling of the court said respondents duly excepted and ask to have their exception thereto allowed.

HARVEY D. HADLOCK,
Per W. G. B.
WILLIAM GRAY BROOKS, *Adm'r.*

March 3d, 1893.

62 Which exceptions having been presented to the court were allowed and signed by the presiding justice, the following endorsement being made thereon, to wit:

Exceptions allowed.

JAMES M. MORTON, *J. S. J. C.*

And on the eighteenth day of March last aforesaid said Alfred Bowditch, administrator, Lucia G. Alexander, and other defendants hereinafter named filed their motion to amend their answer as follows, to wit:

63 SUFFOLK, *ss:*

Supreme Judicial Court. In Equity.

ROBERT CODMAN, Administrator,
vs.
WILLIAM G. BROOKS.

Motion to Amend Answer.

And now come the defendants, Alfred Bowditch, administrator, Lucia G. Alexander, Charlotte B. W. Hallowell, Samuel Swett, Elizabeth H. Swett, Lucia G. Swett, Mary C. Swett, William L. Swett, and Elizabeth G. French, and move to amend their answer to the plaintiff's bill of complaint by adding thereto at the end thereof the following clause:

"And that the said shares of said defendants, amounting in all to one-sixth part of said entire fund, should be paid to the defendant Alfred Bowditch, as administrator of the estate of their ancestor, Lucia G. Swett."

By W. G. RUSSELL,
Counsel for Def'ts Named.

64 Upon which motion the following consent of parties is endorsed, to wit:

We assent to the allowance of this amendment.

J. B. WARNER,
For All Def'ts Except Representatives and Descendants of Henry Gray and Lucia G. Swett.
HARVEY D. HADLOCK,
Solicitor and Counsel for Descendants and Representatives of Henry Gray.

Which motion was thereupon allowed in the words following, to wit:

March 18, 1893.—Allowed by consent of all parties.

OLIVER W. HOLMES, JR., *J. S. J. C.*

65 And on the twelfth day of September, A. D. eighteen hundred and ninety-three, the supreme judicial court for the Commonwealth transmitted to said supreme judicial court within and for said county of Suffolk its rescript as follows, to wit:

66 COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court for the Commonwealth, at Boston, Sept. 12th, 1893.

In the case of—

ROBERT CODMAN, Adm'r, &c.,
vs.
WILLIAM G. BROOKS *et al.*

pending in the supreme judicial court for the county of Suffolk:

Ordered that the clerk of said court, in said county, make the following entry under said case in the docket of said court, viz:

The money in the hands of the plaintiff is to be paid over to the legal representatives of William R. Gray, Francis C. Gray, and John C. Gray, deceased, and the assignees of Horace Gray, deceased.

By the court:

HENRY A. CLAPP, *Clerk.*

Sept. 12, 1893.

67 Thereupon, at a hearing on the twenty-second day of September aforesaid, the following interlocutory decree was entered by the court, to wit:

68 COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

Supreme Judicial Court. In Equity.

ROBERT CODMAN, Adm'r, &c.,
vs.
WM. GRAY BROOKS, Adm'r, &c., *et al.*

Interlocutory Decree.

This cause came on to be further heard and now it is ordered, adjudged, and decreed, with the consent of all parties, that the costs of parties, as between solicitor and client, be paid by the plaintiff out of the fund in his hands and be taxed as follows: To the counsel representing the administrator and descendants of Lucia Gray Swett, two hundred and fifty dollars; to the counsel representing the administrator and descendants of Henry Gray, two hundred and fifty dollars; to the counsel representing the administrators of
69 William R. Gray, Francis C. Gray, John C. Gray, and the assignees of Horace Gray, the sum of two hundred and fifty dollars.

By the court:

C. H. COOPER,
Ass't Clerk.

September 22, 1893.

70 And on the twenty-fifth day of said September, A. D. eighteen hundred and ninety-three, after a further hearing, the following final decree was entered by the court, to wit:

71 COMMONWEALTH OF MASSACHUSETTS, *Suffolk County.*

Supreme Judicial Court. In Equity.

ROBERT CODMAN, Administrator, with the Will Annexed, of the Estate not Already Administered of William Gray the Elder,
vs.
WILLIAM G. BROOKS, Admin., *et als.*

Final Decree.

This cause came on to be further heard, and now, on consideration thereof and in pursuance of the decision rendered by the full court as appears of record in this cause, it is finally ordered, adjudged, and decreed that the money held by the plaintiff as set forth in the bill of complaint, or so much thereof as shall be in his hands available for distribution upon the final settlement of his accounts in the probate court, shall be paid over as assets of the estate of William Gray the elder and as passing under his will to the re-

siduary legatees named therein; that the interest of Henry
72 Gray in said fund passed to his four brothers by his assignment of July 21, 1829, referred to in the bill of complaint; that the interest of Horace Gray, deceased, in said fund passed, by his assignment referred to in the bill of complaint, to the assignees named therein, and the plaintiff is directed to distribute said sum in equal shares as follows: One-fourth thereof to the administrator of the estate not already administered of William R. Gray; one-fourth thereof to the administrator, with the will annexed, of the estate not already administered of Francis C. Gray the elder; one-fourth thereof to the executors of John C. Gray the elder, and one-fourth to William E. Coffin and William S. Bullard, surviving assignees under the assignment made by Horace Gray for the benefit of his creditors.

By the court:

JOHN NOBLE, *Clerk.*

September 25, 1893.

Upon which final decree is the following endorsement, to wit:

Sept. 22d, '93. This decree may be entered. James M. Morton, J. S. J. C.

73 All and singular which premises we have held good by the tenor of these presents to be exemplified.

In testimony whereof we have caused the seal of our said court to be hereto affixed.

Witness Walbridge A. Field, Esquire, chief justice of our said supreme judicial court, at Boston, this sixth day of October, in the year of our Lord one thousand eight hundred and ninety-three.

[SEAL.] JOHN NOBLE, *Clerk.*

74 The following are the assignments of errors:

75 COMMONWEALTH OF MASSACHUSETTS, *Suffolk County,* } *ss:*

Supreme Judicial Court. In Equity.

WILLIAM GRAY BROOKS, Adm'r, *et al.*, Plaintiffs in Error,
vs.
ROBERT CODMAN, Adm'r, *et al.*, Defendants in Error.

Assignment of Errors.

And now come the plaintiffs in error, William Gray Brooks, administrator *de bonis non* of the estate of Henry Gray, and F. Elizabeth Gray and Ellen C. Brooks, and for error in the final proceedings, order, decree, and judgment in the above-entitled suit make the following assignments:

1. That it was error in the supreme judicial court of Massachusetts, under the act of Congress of March 3rd, 1891, to order, adjudge, and decree that the fund in controversy be divided as a part of the

estate of William Gray among the residuary legatees of said William Gray or their representatives.

76 2. That it was error in said court to order, adjudge, and decree that the assignments from Henry Gray to his four brothers, who were his co-executors, precluded the next of kin of William Gray, who claim through Henry Gray, from a distributive share of the amount in controversy.

3. That it was error in said court, under the treaties and statutes of the United States pertaining to the distribution of the fund in controversy, to order, adjudge, and decree that said fund was a part of the estate of William Gray and to be distributed as such estate.

4. That it was error in said court, under the provisions contained in sec. 3477 of the Revised Statutes of the United States, to order, adjudge, and decree that the assignment of Henry Gray to his four brothers, who were his co-executors, excluded the descendants of Henry Gray from a distributive share of the fund in controversy.

5. That it was error in said court, in view of the fiduciary relations which existed between Henry Gray and his four brothers, who were his co-executors, and in view of the record which discloses a mistake as to the value of his interest in claims on European governments for spoliations on property owned and insured by

77 William Gray from 1796 to 1811, to order, adjudge, and decree that the interest of said Henry Gray in said sum in controversy passed to his said four brothers and coexecutors by virtue of his assignment, so as to exclude the heirs of William Gray, who claim through Henry Gray, from an interest in the sum in controversy in the suit aforesaid.

HARVEY D. HADLOCK,
Solicitor and Counsel for William Gray Brooks, Administrator de bonis non of the Estate of Henry Gray, and also for F. Elizabeth Gray and Ellen C. Brooks.

78 COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

Supreme Judicial Court.

WILLIAM GRAY BROOKS, Administrator, *et al.*, Plaintiffs in Error,
vs.
ROBERT CODMAN, Administrator, *et al.*, Defendants in Error.

Assignment of Errors in Behalf of Alfred Bowditch, Administrator.

And now comes Alfred Bowditch, administrator of the estate of Lucia Gray Swett, one of the plaintiffs in error, and assigns for error in the proceedings and judgment the following, to wit:

That the court in the interpretation and construction of section 4 of chapter 540 of the acts of Congress of March 3, 1891, ruled, adjudged, and decreed that the money held by Robert Codman, as administrator, be paid over as assets of the estate of William Gray

the elder to the residuary legatees of said William Gray or their representatives, to the exclusion of the plaintiff in error, whereas this plaintiff claims that as administrator of the estate of Lucia Gray Swett, a daughter of said William Gray the elder he is entitled to one-sixth part of said money; and that the court should have so adjudged.

ALFRED BOWDITCH,
Administrator,
By W. G. RUSSELL,
His Attorney.

79 COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

Supreme Judicial Court.

WILLIAM GRAY BROOKS, Administrator, *et al.*, Plaintiffs in Error,
vs.
ROBERT CODMAN, Administrator, *et al.*, Defendants in Error.

Assignment of Errors in Behalf of Lucia G. Alexander and Others.

And now come Lucia G. Alexander, Elizabeth H. Swett, Lucia G. Swett, Mary C. Swett, William L. Swett, Samuel Swett, Charlotte B. W. Hallowell, and Elizabeth G. French, some of the plaintiffs in error, and assign for error in the proceedings and judgment the following, to wit:

That the court in the interpretation and construction of section 4 of chapter 540 of the acts of Congress of March 3, 1891, ruled, adjudged, and decreed that the money held by Robert Codman, as administrator, be paid over as assets of the estate of William Gray the elder to the residuary legatees of said William Gray or their representatives, to the exclusion of the plaintiffs in error, whereas these plaintiffs claim that as next of kin of said William
80 Gray the elder they are entitled to one-fourth part of said money as follows:

The said Lucia G. Alexander, Charlotte B. W. Hallowell, and Elizabeth G. French to one-sixteenth part each, and the said Elizabeth H. Swett, Lucia G. Swett, Mary C. Swett, William L. Swett, and Samuel Swett to one-eightieth part each, and that the court should have so adjudged.

G. W. G. RUSSELL,
Their Attorney.

81 The following is the report to the full court by the justice before whom the case was heard.

82 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

Supreme Judicial Court. In Equity.

ROBERT CODMAN, Administrator, with the Will Annexed, of the Estate not Already Administered of William Gray the Elder,
v.
WILLIAM G. BROOKS *et als.*

(WILLIAM GRAY, Adm'r,
v.
WILLIAM G. BROOKS, Admin., *et als.*)

Report.

This cause came on to be heard upon the pleadings, which are made a part of this report, and upon the issues of fact raised by the answer of the defendants William Gray Brooks, administrator of the estate of Henry Gray, Ellen C. Brooks, F. Elizabeth Gray, Caroline Gray Haskins, Charles Russell Gray, Lydia F. Cornelius, Mary Codman Winthrop, Frederick William Gray, Arthur Gray, Frances Gray, and Horatio Gray; and evidence was offered thereon.

I find that William Gray the senior died in 1825, leaving a will of which a copy is set out in one of the answers on file, and leaving five sons, William R. Gray, Henry Gray, Francis C. Gray, John C. Gray, and Horace Gray, and one daughter, Lucia G. Swett.

The five sons were made executors of the will, and qualified as such, giving a bond in the form permitted to executors who are residuary legatees, binding themselves to pay debts and legacies. No inventory of the estate and no account was ever filed in the probate court, nor was any ever called for so far as appeared.

On September 30, 1828, after the estate had been partly administered, schedules were prepared by the executors showing in detail the assets of the estate then remaining undivided, and stating also an estimated value of these assets then adopted for the purpose of settlement. A copy of these schedules is hereto annexed marked Exhibit A.

83 At this time the executors' books of account showed that Henry Gray had received out of the divided assets $189,368.42 more than his share of the divided assets.

A portion of this amount consisted of $31,258.64, which was the balance of a note for $91,000 dated March 14, 1822, given by Henry Gray to his father during the latter's life, and $13,322.70, accumulated interest on said note.

On July 21, 1829, Henry Gray executed and delivered to his four brothers an instrument purporting to be an assignment of all his right, title, and interest in all the property mentioned in the schedules, or in any property to which he might become in any way entitled as residuary legatee of his father, William Gray, a copy of which assignment is hereto annexed marked Exhibit B.

The face value of the undivided assets on September 30, 1828, was, according to the schedules, $1,094,459.52; the estimated value was $155,000.00. In consideration of this assignment, and by its terms, the assignees each discharged Henry Gray from all obligation to them on account of the excess of $189,368.42 received by him as above stated.

Acting under this assignment, the assignees named therein took and retained the property assigned thereby, including the claims against foreign governments, valued by the executors in the schedules at $1,000.

William R. Gray died in 1831, Henry Gray in 1854, Francis C. Gray in 1856, never having had any issue, Horace Gray in 1873, and John C. Gray in 1881, leaving no widow, and never having had any issue.

The counsel for the defendants above named stated that he charged no fraud upon any of the parties, but claimed that the executors made a mistake as to the value of the claims against foreign governments, estimated in the schedules at $1,000, and also made a mistake in estimating the value of the other residuary property of William Gray the elder, and that this was the whole of his case.

The above findings are not objected to.

Subject to the objection of the other defendants, I admitted, *de bene*, such evidence as the defendants Brooks and others offered for the purpose of showing errors in the executors' book of account; but I find that the evidence, if admissible, showed no errors in the account.

I also admitted, *de bene*, and subject to the same objection, evidence tending to show that the assignees under said assignment received from the claims against foreign governments mentioned in said schedules, the sum of about $300,000, collected by them at various times subsequent to the assignment, which sum does not include the amount collected from the French spoliation claims which is the subject of this proceeding.

It did not appear that any objection to the assignment or schedules or accounts of the executors had been made by any per-
84 son except in the present proceedings. Nor did it appear, if that is material, except as it might be inferred from the relation of the parties, that Henry Gray or his representatives knew of the money collected from foreign governments.

There was no evidence that at the time of the assignment the other executors had any knowledge regarding the accounts, assets, or claims that said Henry did not have. No other evidence was offered by said defendants.

I ruled that, on the evidence offered above, even if admissible, which in my opinion it was not, and on the other facts as stated, the defendants Brooks and others had shown no ground for setting aside said assignment, or disturbing the accounts or valuations made by the parties in 1828 and 1829 as aforesaid.

The objection was made by the defendants Brooks and others that the assignment above referred to is invalid by the statutes of the United States, and this objection I do not pass upon.

At the request of all parties I reserve the question of law whether the fund held by the plaintiff as stated in the bill of complaint is to be distributed and paid over as a part of the estate of William Gray the elder, deceased, and as disposed of by his will (subject to the assignments referred to in the bill of complaint), or is to be paid over to the next of kin of said William Gray, determined as of the time of his death, or as of the time of passing the act of Congress approved March 3, 1891, or as of any other date; and I further reserve the question whether said assignment of Henry Gray is invalid by reason of any statute of the United States.

I report the case to the full court upon the pleadings and the above rulings and findings of fact, the objections of the defendants Brooks and others to such of the rulings and findings as they object to, and the questions of law reserved above; such decree to be entered as law and justice may require. At the request of the defendants Brooks and others, the evidence taken at the hearing before me is made a part of this report, and the books of account may be referred to in the argument before the full court, so far as they concern the items of alleged error.

Reference may be made at the argument before the full court to facts stated or referred to in decisions of the Court of Claims, to public documents containing reports of committees or of the Court of Claims to Congress, or to proceedings of Congress, so far as any of the same may be admissible and relevant in determining the questions of law now reported.

JAMES M. MORTON, *J. S. J. C.*

85 EXHIBIT A.

SCHEDULE OF THE UNDIVIDED EFFECTS OF THE ESTATE OF WILLIAM GRAY, 30 SEPTEMBER, 1828.

A.

List of Balances of Accounts Outstanding in Wm. Gray's Books of Little or No Value 30 September, 1828.

Ledger fo.	Titles.			Balances.
44.	Jacob T. Wild.....Bad debts at Savannah.....	1,209 99		
	Collected of L. Mason in full 825....	200		
				1,009 99
51.	P. P. F. Degrand...Bal. ac.....			251 42
"	Dan. Lakeman..... "			7,470 42
62.	John B. Swett..... "			4,622 54
"	Geo. Williams.....Baltimore.....			1,274 33
"	And. Lackey.....M. Head.....			776 35
"	Goodhue & Ward..N. York....Bad debts.....			7,553 71
89.	Goodhue & Co..... " ..... "			836 25
85.	John Ayres.....Protested bills ex.....	5,018 32		
	Ex's rec'd of Grafton.....	1,300		
				3,718 32
87.	Ward S. Gray.....Salem Bank bonds.....			5,000
88.	William Kitchen...(Englishman).Poor.....			200
89.	Sam. Williams.....London.....			54 44
92.	Peter Lander.....Salem.....Bad debts.....			4,982 92
"	I. Lincitti.....Palermo....Bal. Gibbs' estate.....			8,605 02
97.	G. W. Prescott.....Charleston..Bad debts.....			1,393 34
108.	Benj. Waterhouse..Cambridge.....			150
111.	Rob. I. Lowry.....La Guayra & Baltimore dec'd.....			14,976
108.	Joseph Lindsey.....M. Head... "			1,286 67
128.	Enoch Wiswall.....Watertown.Protested d'ft..			1,195 30
129.	Wild & Gray.....Bad debts..			3,842 83
294.	Wm. Plympton.....Bal. ac.....	181 43		
250.	.....Co'ns'ls' ac.....	2,385 16		
				2,566 59
212.	Tho. Hewes.....N. Orleans..Bad debts....	4,433 26		
	Collected by Wm. G. Hewes.....	169 43		
		301 48		
86		470 91		
				3,962 35
338.	Z. Atkins .. ..Matanzas...Bal. ac. settled by Cap. Orne....			150 63
346.	Josiah Hussey.....Nantucket..Notes collected, failed.....			288 52
355.	And. Hall.....Baltimore..Bad debts.....	926 30		
	Collected 1826.....	275		
				651 30
358.	Wm. G. Very .....Salem.....Bal. ac.....			158 75
327.	Inland Exchange...Sam. Mudge. Protested d'ft in hands Wm. B. Breed, Lynn.....			678 75
306.	Codman A. & Co.....Bad debts.....			1,832 60
				$79,489 34

Unclaimed balances due by estate to—

38.	Lewis Richeaux, dec'd.....C. Hayte.....	$207	45
112.	Ramdololl Day, " .....Calcutta	50	—

Valued for settlement, $250.

B.

Account of Notes Receivable, Designated in the Executors' Books "Suspended N. R." Being of Uncertain Value, & Remaining on Hand, All Witnessed Except De Wolfs', 30 Sept., 1828.

							Debt.	Valued.
Mathew Myrick	Nantucket	1 March	1826	9 mo.		3,661 28		
		"	"	12 "		3,700		
	Bal	8 Oct.	1827		1,096 37			
		D. Joy's note end			215 62			
						880 75		
							8,242 03	4,000
Gardiner Coffin	"	1 March	1826	1 year		3,800.—		
		"		2 "		3,786 36		
							7,586 36	
Ch's F. Hussey	"	"		1 y.		2,100		
		"		2 "		2,045 50		
							4,145 50	
Ch's Hussey 2d	"	"		1 y.			102 75	
P. & I. Myrick	"	"		"		1,115		
		"		2 " bal		265		
							1,580	1,580
Sam. Cary	"	13 Aug't	1828	5 years			2,072 66	1,000
Geo. D. Wolf	Bristol	29 Nov.	1825	6 mo.			1,863 26	
Austin Gray	Lynn	21 Feb.	1826	dem'd			2,526 83	
John D. Atwill	"	Due to July	1829				375 97	300
John White	Salem	11 Sept.	1826	dem'd			1,234 50	
87 Wm. Plympton	5 notes	1 July	1828	dem'd		6,000		
						5,000		
						3,000		
						5,304 75		
						2,465 62		
							21,770 37	
John Ayres		12 July	1828	dem'd			6,817 50	
James Robbins	Watertown	8 "	"	"			542 32	250
Tho. P. Rich	Boston	23 Aug.	"	"			273 60	200
I. B. Cahoon	Portland	1 July	"	1, 2, 3 years			1,227 —	1,227
							60,350 65	
Valued for settlement								8,557

C.

Estimate of Real Estate and Other Property Remaining on Hand 30 September, 1828.

Ropewalk estate, in Portland		30,000
Estate in Summer St. Boston		60,000
Wharf estate, Lynn St. do		25,000
Wharf estate, Charlestown		10,000
Estate, (Coates') 3 lots & house, Lynn		300
Reversion, land & house, occupied by Widow Clough, Salem		150
Haskell estate, land and store M. Head } Sold but not }		200
Marsh land, life estate Roxbury } yet paid for }		70
Colley estate, ½ 50 acres land, So. Berwick		500
Blanchard estate, house & land, Portland		1,500
		127,720
10 shares Gloucester canal	100	
Duck & bagging machinery Charlestown	100	
Pew St. Paul's church etc	350	
Pew in Old South church	500	
		1,050
Valued for settlement	Dolls.	128,770

88 D.

Account of Notes Receivable Payable to Wm. Gray & Outstanding 30 Sept., 1828.

Notes of persons deceased:

Obed Wyer	630	
Elbridge Gerry, 2 notes	1,860	
Wm. Grover	163 16	
Hotten Dale	100	
John Tedder	186 52	
H. W. Gordon	26,447 99	
I. P. Lathrop	190	
I. W. Vans	915 27	
Tho. Woodberry	383 04	
Benj. Alley	200	
John Somes, 4 notes	2,090 48	
Joseph Lindsey	733	
N. Batcheller	1,432 02	
Wm. Chisholm	399 26	
I. Bulier	30	
R. Farley	58 50	
Reuben Myrick	525	
Benj. Prescott, 31 Dec., 1816. S. I. Prescott, surety	1,263 78	
		37,608 02

Notes outlawed:

		Dates.			
Arch'd McNiel		1806	1,443	53	
Timo. Dix		1807	237	30	
Jona. Kendall		1810	352	50	
Josh. Slater		1811	50		
David Morse		1812	291	12	
Perkins Nichols		1813	1,316	85	
P. & I. Rich		"	370	06	
I. D. Crocker		1815	70		
Sam. Burrill		1816	175		
Benj. Mudge		1814	406	35	
Sam. Hale		1816	400		
Sam. Hancock		1817	20	70	
Nath. Crane		"	21	40	
Wm. Vans, 2 notes		1812	150		
John Bailey		1810	115	27	
Joseph Marquand, Jr.		1817	466	95	
Mott & Prentiss		1819	300		
89 John Pratt		1809	475		
G. W. Megit		"	100		
Wm. Welsh, 2 notes		1810	512	39	
James Kettell		1812	30		
F. E. Hutchings		1813	4,711	50	
I. Tewksbury		1814	20		
Nath. Ireland		1820	185		
Leonard French		1819	122	72	
Wm. Jones		1820	485	25	
					12,828 89

Witnessed notes:

I. Ayres & Wm. Flowers	May 26, 1814		25	
Thos. Keeler	Feb. 6, 1812		213	26
Russell Smith	May 13, 1817		75	
Hall & Welsh	Dec. 7, 1819		360	86
John Bailey	June 1, 1820		302	42
E. Chamberlain	Oct. 22, 1816		2,635	92
Joseph White	Ap'l 15, 1815		282	07
Perkins Nichols	Dec. 3, 1813		920	92
Sam. Bowden	July 12, 1812		2,289	54
James Abbot	May 6, 1808		262	83
Francis G. Macy	Oct. 1, 1825		1,749	17
Wm. C. Rogers	Mar. 4, 1815		259	04
"	" "		259	04
				9,635 09

Alex. H. Everetts, 3 notes due	13 May, 1828	1,000	
	" " 1829	1,000	
	" " 1830	1,000	
			3,000 —

Notes not witnessed:

Rob't Elwell, ack'd letter, N. York, 1827	May 1, 1822	1,827	3,000
Elip. Weston	July 30, 1824	75	
John B. Macy, 3 years	Oct. 15, 1822	1,545 15	
do. "	" "	562	
Sam. H. Macy "	" "	1,545 16	
Hanscomb & Pratt	Aug. 18, 1820	382 63	
Charles Lane	Ap'l 3, 1824	76 50	
"	" 1, 1823	47 18	
Benj. Waterhouse	Aug. 8, "	100	
	Nov. 18, "	100	
	May 3, "	300	
F. Wilby & Co.	" 15, 1822	1,552 12	
"	June 27, "	7,000	
Ex'on obt. 1828.			
90 Geo. Bates	Nov. 10, 1824	645 63	
Ex'on obt'd 1828, Oct.			
Wm. Plympton 4 notes	Oct. 7, 1822	3,514 85	
1 ex'on Jan. W. G. Nov. 1824	" "	3,514 86	
1 ex'on " Her S. " "	Ap'l 27, "	4,437 06	
Father's 4 notes of W. P.	Feb. 10, 1823	2,586 91	
Ack'd in 1828, Oct'r.			
John S. Allanson	Mar. " "	750	
M. & I. B. Burrill	May 20, "	100	150
M. I. B. & A. Burrill	Ap'l 2, "	605 19	
W. G. Ap'l, 1814—Enoch Wiswell's d'ft on S. Davis & Co. due	June 23, 1824	1,000	
			32,267 24

Notes under assignment & administration:

Joseph Grafton	Nov. 1, 1821	1,311 53	
P. P. F. Degrand	Feb. 20, 1820	6,995 74	
Ad: John Tuckerman		600	
			8,907 27
Total			$104,246 51
Valued for settlement			$3,250

E.

Account of Book Balances Outstanding in Ex'rs' Books Considered of Uncertain Value, 30 Sept., 1828.

Ledger folio.	Names.		Debt.	Valued.
18	P. Bishop & Gray of Charleston Bal. ac. 1 Feb. 1828	9,725 18		
	Ded. dividends rec'd on ac.	1,467 02		
			8,258 16	483
100	Do. ac. bad debts. Due from C. Lippitt, Augusta		1,305 83	650
51	Codman A. & Co. New York bal. ac. 24 July 1826		10,766 23	
54	Wm. G. Hewes New Orleans. Eben Fisk's 2 notes in his hands to collect—			
	Due 15 May 1828	2,700		
	" 1829	2,659 35		
			5,359 35	
60	Ami C. Lombard —— —— due on ac. sales duck to Cap. Brooks, Eastport. Judgement rec'd July 1828		98 53	90
72	Marple Dodge & Co. C. Hayti bal. ac. 7 June 1826—have John Dodge's obligation therefor		9,221 80	
76	Shillaber & Co. Batavia. Bal. ac. 31 Dec. 1826		2,424 20	
94	Land & buildings of Ezra Smith, Rumford, Maine, title of part in dispute. T. Brown took possession on ex'n Oct. 1826		2,694 37	500
91				
94	Assignees T. Tarbell bal. Oct. 1827 1 div'd paid 20c		5,158 50	1,200
95	" H. Lee " Sept. 1828		1,412 07	1,400
96	Tho. Browne ac. bad debts rend. 30 Sep. 1826	9,109 48		
	Ded'n paid since	134 56		
			8,974 92	700
19	Do. E. L. agency—bal. 7 Ap'l 1828 secured by notes & mortgages		6,528 74	6,000
101	Sam. Butman, agc. Etna, bal. for notes in his hands for collection & mortgages of his rec'ts 14 Nov. 1827		2,131 36	2,000
			$64,334 06	
	Valued for settlement			13,023

F.

Account of Outstanding Debts Due the Estate Which are Not Matter of Entry in Books of Wm. Gray or Executors, September 30, 1828.

City mills, demand, viz:

Gen. Shepherd Leach, for grain bill on file	$125	
John A. Havens' note due 14 May 1827 Keeps a boarding-house	29	58
R. Taft, Roxbury, bill grain—judgement rec'd by Jos. Harrington att'y C St. bill	35	26
Sam. Goodhue note (Western avenue) in hands F. C. G.	83	89
Loud & Lunt ac. Weymouth, do.		
Wm. Davis " Chelmsford, do.		
Benj. Dearborn bill rent	56	50
Ex'on for rent beside	70	

Oliver Hatch ex'on, Mill Pond St. Keeps tavern 82 25
Senaca Harrington, bill grain, at Shepherd's wool manuf'y Watertown... .... 12 84
Frederick Hobbs, att'y Eastport, has demands—
vs. Andrew Harrington.... ..... 23 03 Paid to Hobbs.
Wm. Harrington ex'on ... . 30 57 Secured.
James M. Lincoln's ac. 130 40
——— 199 60

Judgement rec'd $146.
Due from B. T. Reed ac. in file in dispute.
Bill *vs.* Hill & Flint for 20 casks raisins of Hope's cargo sold by Wilby at auction 1826, in hands F. C. Gray $210
Execution *vs.* I. & O. Hall, silk dyers 304 20
92 Note of Enoch Purrington, Lynn for rent 9 Apr. 1825..... 32
Note of John W. Brooks, Lynn for rent 25 May, 1827 .... 45 13
——— 67 13

Rec'd of Wm. B. Breed, ag't.
A claim of about £5,000 on Jacobson, for part cargo rice ship Matrosen, in care I. Bates, London.

Valued for settlement $150—

G.

Summary of Claims on European Governments for Spoliations on Property Owned and Insured by Wm. Gray from 1796 *to* 1811.

Am't claims on France, prior to 1800 *p* list... 260,500
after 1800 " ... 162,000
——— 422,500 00
" " " Naples *p* list..... 142,100 00
" " " Denmark do..... ..... 45,200 00
" " " Holland do..... 13,600 00
" " " Spain for property in brig Otter, O. Keating, master, condemned at Porto Rico 1823 *p* list..... 22,421 29

This case was reported to the Secretary of State by Henry Gray, owner of the vessel Dec. 1826.

Doll's 645,821 29

Valued $1,000.

Aggregate Valuation of the Property Specified in the Preceding Schedule & Being the Whole Remaining Effects of the Estate, viz:

p Statements marked—
A. Wm. Gray's outstanding book balances..... 250
B. Executors' suspended notes receivable..... 8,557
C. Real estate & other property..... 128,770

D. Wm. Gray's old notes outstanding.....	3,250
E. Executors' book balances do.....	13,023
F. Outstanding small demands due the estate not matter of book ac.....	150
G. Claims on European governments...	1,000
	155,000

The above sum has been passed to the credit of the estate and each executor charged with one-fifth thereof *p* patrimonial account. Settled Sept. 30, 1828 say $31,000.

93 EXHIBIT B.

This indenture made this twenty-first day of July, in the year of our Lord one thousand eight hundred and twenty-nine, by and between William R. Gray, Francis C. Gray, John C. Gray, and Horace Gray, of Boston, Esquires, of the one part, and Henry Gray, of Roxbury, Esquire, of the other part, witnesseth:

That whereas, the parties hereto were executors and residuary legatees under the will of the late William Gray, of Boston, Esquire. And whereas, on a final settlement of accounts by said executors on the 30th of September last, it appeared that there was due from said Henry Gray to said executors the sum of one hundred and eighty-nine thousand, three hundred and sixty-eight dollars, and forty-two cents, which sum was then transferred, in four equal portions, to the several accounts of the parties of the first part, making a balance due from the said Henry, to each of them, of forty-seven thousand three hundred and forty-two dollars, and ten cents, which sums, with interest thereon, are still due and unpaid. And whereas there were and are certain notes, balances and other demands due to said executors yet uncollected, and certain real and personal property of said William Gray's estate not all finally distributed, and certain claims and demands on our own and other governments still unsettled, all which were intended to be truly described in certain schedules marked A, B, C, D, E, F, and G annexed to said accounts, and were therein valued for settlement at one hundred fifty-five thousand dollars, which amount was passed to the several accounts of the five residuary legatees, in equal portions, being a sum of thirty-one thousand dollars to each, it being understood and agreed that the portion of said Henry and the proceeds thereof should be assigned and applied towards the payment of the balances aforesaid, and sundry conveyances having been made accordingly, now, therefore, I the said Henry Gray, on execution of said agreement and understanding, and in satisfaction of the balances aforesaid, do hereby assign, transfer, release and convey to the parties of the first part, in equal portions, all my right, title and interest in and to all notes, balances, claims and demands, and all other property real and personal mentioned in the said schedules, and all not therein mentioned, if any such there be, to which I am or may become in any way entitled as one of the residuary legatees, or one of the executors

of said William Gray, or in any manner by or through him. And I do hereby release and discharge the parties of the first part, and each of them from all obligation and accountability to me for the said property and the proceeds thereof; and do covenant to execute any further assurances proper to carry into effect the true intent of these presents. And we the said William R. Gray, Francis C. Gray, John C. Gray, and Horace Gray in consideration of the said agreement, release and transfer do each of us severally hereby re-
94 lease and discharge the said Henry Gray from the balance aforesaid of forty-seven thousand three hundred and forty-two dollars, and ten cents with the interest due thereon.

In testimony of all which the said parties have hereunto set their hands and seals to this indenture, executed on triplicate the day and year first above written.

HENRY GRAY. [SEAL.]
W. GRAY. [SEAL.]
F. C. GRAY. [SEAL.]
JOHN C. GRAY. [SEAL.]
HORACE GRAY. [SEAL.]

Signed, sealed, and delivered in presence of—

NAT. FRANCIS.
WARD H. BLACKLER.

95 The following is the report of evidence:

96 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss*:

Supreme Judicial Court.

WILLIAM GRAY, Adm'r,
v.
WILLIAM GRAY BROOKS, Adm'r, *et al.*

Report of Evidence.

The following is so much of the evidence taken at the hearing, and referred to in the report of Mr. Justice Morton, as the respondents, William Gray Brooks, administrator, and others, his co-respondents, deem relevant and material to their case, and wish to have reported.

The other respondents in the cause agree that only this portion of the evidence be printed and that none of the evidence omitted, is material.

March 11, 1892.

Morton, J.

BOSTON, *Feb.* 11, 1893.

Mr. WARNER: Your honor will remember that I read at the last hearing the original papers of Henry Gray, the schedules which are referred to in the assignment, and the order which had been given

by Henry Gray to his co-executors shortly before the assignment. I suppose that our case, so far as we have a case, consists wholly in introducing formally these papers which were found among the papers of the last surviving of these co-executors of Mr. John C. Gray. I offer these papers in evidence. The order from Henry Gray dated October 28, 1828.

Mr. HADLOCK: I object to that.

Mr. WARNER: The assignment signed by Mr. Henry Gray and his four brothers, dated July 21, 1829.

Mr. HADLOCK: That I object to.

Mr. WARNER: And the schedule referred to in the assignment.

Mr. HADLOCK: That I object to, your honor.

MORTON, J.: Well, they may all come in *de bene*.

Mr. HADLOCK: They amount to nothing, if your honor please.

97 Mr. WARNER: There is only one matter of formal proof which may be necessary, if Mr. Hadlock requires it. I will offer testimony to show where these paper come from, if your honor requires it. They are more than thirty years old.

Mr. HADLOCK: I require everything.

MORTON, J.: Is your objection a formal one or a substantial one?

Mr. HADLOCK: A substantial one, your honor. My objection is this, that in producing these papers they must first prove the execution of the papers. We know nothing about them except they are offered here. Now, they must prove the execution of the papers themselves by the evidence that is required. If there are witnessed papers, it must be by proving the handwriting of the witnesses, and some are witnessed papers.

MORTON, J.: Then your objection is now formal. I understand it to be substantial rather than formal.

Mr. HADLOCK: Both.

MORTON, J.: What do you say to that, Mr. Warner?

Mr. WARNER: I understand the rule to be, your honor, that deeds of every kind more than thirty years old do not require testimony of any subscribing witnesses or proof of execution. This assignment is an instrument under seal. That, I suppose, therefore, goes in without proof, unless your honor should require proof that these papers were found among the effects of the last surviving executor of John C. Gray.

MORTON, J.: Do you require proof of that, Mr. Hadlock?

Mr. HADLOCK: I am obliged to question everything, your honor. I do not want to be captious in this matter, but I must require proof. I say that the papers do not prove themselves notwithstanding the lapse of time.

MORTON, J.: Well, I should rule, Mr. Hadlock, that if it appears that the papers come from the custody of the executors, they may be admitted *de bene*. No evidence of that has been offered yet, but I am only indicating how I should rule upon it in case that evidence does appear.

Testimony of John C. Gray.

(By Mr. WARNER:)

Q. You are the grandson of Mr. William Gray, Senior, are you?
A. I am.
Q. And son of Mr. Horace Gray?
A. I am.
Q. Mr. John C. Gray, Senior, was the last of the executors, was he not, to survive?
A. He was.
Q. What year did he die?
A. He died in the year 1881, I think.
Q. And were you one of his executors?
A. I was.
Q. Did his papers come to your possession?
A. They did.
98 Q. Will you look at these papers, the assignment, schedules and the order, and say where you got them?
A. I found all three among his papers.

Cross-examination.

(By Mr. HADLOCK:)

Q. Did you find other papers than those that you now produce?
A. Other papers among his papers?
Q. Yes.
A. Oh, yes.
Q. And the papers you have before you are only a portion of the papers that you found?
A. Only a portion.
Q. Do you know to what those other papers related?
A. I have looked at them somewhat, never examined them very carefully.
Q. So you take from the papers you found the papers that you now have before you and produce them here in court?
A. I do.

Mr. HADLOCK: I object, your honor, unless all the papers that were found at the time produced, to a portion of the papers that may be found being admitted in that way. We are entitled to all the papers.

MORTON, J.: I shall admit those *de bene*, Mr. Hadlock.

Mr. HADLOCK: You will save my rights, of course?

MORTON, J.: Certainly.

Mr. WARNER: That is all we have to offer.

Mr. HADLOCK: Do I understand your honor to admit these papers without any further proof of execution than the fact that he found them among the papers of a man who had been an executor?

MORTON, J.: I have not admitted them conclusively and decisively yet, Mr. Hadlock. I have simply admitted them *de bene*.

Mr. HADLOCK: Because I want to state an objection here, that these papers do not prove themselves.

Examination of DAVID A. PITMAN, offered by respondents Brooks and others as an expert book-keeper:

(By Mr. BROOKS:)

Q. On the original executors' books, the journal, concerning an item on December 30, 1826, there is a note charged under the head of Henry Gray, sundries, and charged down here, William Gray's notes receivable for surrender of William Gray's note on the 14th of November, balance due thereon, $31,258.64, and under the head of interest on this note of the 14th of November, 1822, there is interest charged, $13,322.70. I want to ask you, as an expert, whether the interest at six per cent., which was the law in those days,
99 from the 14th of November, 1822, to the 30th of December, 1826, on $31,258.64 would amount, in your opinion as an expert, to $13,322.70.

Mr. WARNER: It would not amount to that plainly, or anything like it.

Q. Then I want to ask, in your opinion as an expert, from whence this charge proceeded of interest, $13,322.70.

A. I couldn't say where it came from, I am sure. They have put it down there as interest from the 14th of November, 1822. I couldn't say where they got that.

Mr. BROOKS: It is admitted then that the interest on that note for that period of time would not amount to that?

Mr. WARNER: It is admitted that interest on $31,000 would not amount to that, but the explanation is perfectly simple. You just look at the book.

MORTON, J.: Well, the original entry is simply an interest account of $13,000, without anything to show where it came from.

Mr. WARNER: It was for the surrender of William Gray's note of the 14th of November, 1822, balance due thereon $31,258.64. That is, the note was originally larger. We happen to know it was in the neighborhood of $80,000 or $90,000, and the interest charged on his note is interest not on the balance which was paid, but on the whole note. There is no pretence that this interest is calculated on the sum of $31,000. That explains it entirely.

Q. Then why should this man be charged, in your opinion as an expert, with interest on a certain note when at that time he only owed $31,258.64?

A. I don't know why they charged as much interest as that, I am sure, on that note.

(By Mr. WARNER:)

Q. Supposing no interest had been paid on the note from the be-

ginning, and the note was originally $80,000 or $90,000; wouldn't that account for it?

A. That, indeed.

MORTON, J.: The whole thing is apparent. Here is a note for $70,000 or $80,000, and they finally made an entry of the interest due upon the note for the time it had been running.

Mr. BROOKS: Now, I desire, your honor, to offer in evidence, the original books of Henry Gray, one of the respondents in this case. They were commenced in June, 1826, and continued until Jan. 1, 1829, when the last entry was made.

Mr. HADLOCK: Is it admitted those are the original books of Henry Gray?

Mr. WARNER: I do not know. Are they in his handwriting?

Mr. BROOKS: Yes. His handwriting extends to July 15, 1826, then his clerk; then it commences again on May 1, 1827, and continues through to the end, Jan. 1, 1829, in his own hand again, which I can prove by letters I have in my pocket.

Q. I desire to ask you as an expert this. There is a charge on the 10th of January, 1827, a note dated the 14th of Novem-
100 ber, 1822, for $31,258.64. On the interest account there is a charge which reads as follows: "Interest on William Gray's note of $91,080.72"——

Mr. WARNER: That explains the whole thing.

Q. —on which the interest charged is $13,322.70. Now, in your opinion is an expert, does this charge of interest on this note for $91,000 relate to the same matter as the note stated to be on the 14th of November, 1822, $31,258.64.

Mr. HADLOCK: I suppose the books will speak for themselves.

Mr. WARNER: This explains whatever doubt there might have been.

Mr. HADLOCK: And there will be certain pages of the book that ought to go in as evidence which must make it clear without the testimony of any witness.

Mr. WARNER: I would like to know what this is offered for. I would like to sift it through now we have got it.

Mr. HADLOCK: It is only offered to show the entire transaction, brother Warner, that is all.

(By Mr. WARNER:)

Q. This interest item of $13,322.70 is the same as we were discussing?

A. Yes, sir.

Q. And it appears now that was cast on the whole face of the note?

A. It appears that way, I should say.

(By Mr. HADLOCK:)

Q. Was that interest for a year?

A. No, sir; not at all. It is four or five, sure.

Mr. WARNER: The note is for $91,080.72, November 14, 1822, and the interest is cast to the 10th of January, 1827, and is entered $13,322.75.

Mr. BROOKS: I would like to put on the record these pages of the journal, pages 45 and 46.

Mr. WARNER: Of course, it is understood we object to all this, and it goes in *de bene*.

MORTON, J.: Yes, in the same manner.

WILLIAM GRAY BROOKS sworn.

(By Mr. HADLOCK:)

Q. Mr. Brooks, have you ever made an examination of the records in the probate office to determine what estate William Gray left?

A. I have, sir.

Q. What did you find?

A. I found no account of the executors filed in the probate office, no appraisement of the estate on file, and no paper to show the amount of the estate which he left.

Q. From the papers in the probate office did you ascertain whether the estate had ever been settled?

A. I ascertained that the estate had never been settled, and up to date it remains unsettled.

101 Q. What amount was the inventory?

A. There was no inventory whatsoever filed in the case.

Q. None whatever?

A. None whatever.

Q. And no settlement had been made?

A. No settlement had been made.

Cross-examination.

(By Mr. WARNER:)

Q. When you say no settlement had been made you merely mean you found no evidence on the record of settlement?

A. In the probate court I found no evidence of any settlement having been made.

Q. Mr. William Gray Senior's five sons were made executors, were they not?

A. They were.

Q. And were residuary legatees?

A. They were.

Mr. WARNER: I offer, if your honor please, a bond issued at that time which they filed as residuary legatees to pay the debts and legacies—a certified copy of that bond.

MORTON, J.: I think that may be admitted.

WILLIAM G. BROOKS re-examined.

(By Mr. HADLOCK:)

Q. Mr. Brooks, from your examination of the papers in the probate office, can you state the value of the estate of William Gray at the time of his decease?

A. No, sir; not from papers filed in the probate office, but from the schedules presented by the counsel for the complainant I can.

Q. Will you state it, please?

A. Regarding the residuary estate, the face value according to the schedules which were presented by the complainant, it amounts to $1,094,459.52.

Q. That was at his decease?

A. That was at the time of settlement alleged.

Q. What year?

A. On or about Sept. 30, 1828; the face value of the residuary estate at that time according to the schedule.

Q. Do you know how much has accrued to the estate since then?

A. There has accrued payment of certain claims from the United States Government of which there are authenticated copies from the department at Washington.

Q. You may state what those copies contain, and then we will offer them in evidence.

A. This is a copy from the Secretary of State containing the awards coming to the estate of William Gray on account of spoliations committed by subjects of the Kingdom of Naples or the Two Sicilys.

102 Q. The date, please?

A. The date is January 27, 1835.

Q. How much?

A. To the amount of $133,385.39.

(By Mr. GRAY:)

Q. What is this award?

A. This is the copy of the record of awards given by the Neapolitan commission to the estate of William Gray for spoliations.

Mr. WARNER: It is understood we object to all this.

MORTON, J.: Yes.

The WITNESS: I have similar papers copied concerning spoliation committed by the subjects of Denmark of the date of March 28, 1833. The sum actually paid was $14,473.42.

Q. What book have you, Mr. Brooks?

A. I have a book called a statement, showing the awards of the commissioners appointed under the conventions between the United States and France, concluded April 30, 1803, and July 4, 1831.

Q. It is a public act?

A. Yes; and between the United States and Spain, concluded February 22, 1819.

Mr. HADLOCK: We offer that in evidence, and desire to call your honor's attention to certain portions of it.

The WITNESS: This is from the payment of awards under the treaty with Spain in 1819 that were allowed the estate of William Gray.

(By Mr. WARNER:)

Q. That is, allowed under the treaty with Spain?

A. Allowed under the treaty with Spain, allowed by the commission appointed by the United States to adjudicate the same—the sum of $109,961.58, from which the sum of $1,060.54 is to be deducted, because William Gray acted as attorney for another party, so that the sum——

(By Mr. HADLOCK:)

Q. What date is that?

A. The date is specified. It was under the date of the commission appointed June 8, 1821, which was finally adjourned June 8, 1824.

Q. Can you show from the books which you have the amounts that have been received from spoliation claims up to the present time?

A. Well, I desire to testify to the awards first. There was awarded under the convention with France of July 4, 1831, to the estate of William Gray, the sum of $206,703.81.

(By Mr. GRAY:)

Q. What year was this award made.

A. The commission to award these claims with France under treaty of July 4, 1831, met Sept. 17, 1832, and adjourned Dec. 31, 1835. I desire to state that under this award there was actually paid to the estate of William Gray, under this treaty of July 4, 1831, with France the sum paid in instalments of $106,302.74.

Q. Is it an additional payment?

A. This is a payment under that award, I stated.

(By Mr. WARNER:)

Q. Where do you get those figures?

A. From this book. You can come and look at it.

Q. Just indicate the page, if you will.

A. I will; it is indicated on page 100 of this document. The amount was paid in six installments and the interest thereon.

103 (By Mr. GRAY:)

Q. Is this the Spanish or the French claim?

A. This is the French claim of July 4, 1831.

(By Mr. RUSSELL:)

Q. What is the whole amount?

A. The total is $106,302.74, paid in six instalments with interest, on pages 100 and 101 of this document.

Q. Mr. Brooks, to go back a moment; you referred to two different awards from Spain. Are those the same or two different ones?

A. Concerning different subjects. The first award which I gave was for the brig Otter, which is $29,723.28.

Q. We have not heard that at all.

A. No; I haven't got to that yet.

Q. You referred to two different awards from Spain, one of $23,000 and one of $109,000?

A. No; I beg pardon, not $23,000, because this record states that 28½ per cent. should be added to the amount awarded. This was January 31, 1838. The amount with 28½ per cent. added by the commission was $29,723.28.

(By Mr. RUSSELL:)

Q. You gave it before as $23,227.31?

A. That was the original claim allowed, but on the 31st of January, 1838, by a decree of the commissioners, 28½ per cent. was to be added to the amount of each and every of the awards allowed claimants, signed John H. Mumford, signed Lewis F. Henry.

(By Mr. WARNER:)

Q. You mean that is distinct from the next award from Spain?

A. Yes; but there is one correction which I wish to make in that award by Spain. I said a certain amount would have to be deducted because William Gray was agent for another party. The amount awarded William Gray was $108,901.04.

(By Mr. GRAY:)

Q. Have you any evidence of that being paid?

A. Yes.

(By Mr. HADLOCK:)

Q. How much of that was represented by the other party?

A. $1,000 was due the other party, that is all, so that it makes due to William Gray $108,901.04, which sum was paid according to this book, as appears by this printed record. The sum to be paid as the final award was $109,961.58; as attorney for Ward Chipman to be deducted, $1,060.04. That was paid.

(By the COURT:)

Q. Are you testifying as to what was the amount of the award, or are you testifying that was the amount that was paid?

A. I am testifying now, sir, that this was the sum to be paid as the final award.

Mr. WARNER: A list of sums allowed under the treaty with Spain is the heading.

The WITNESS: Now, I want to testify to the fact that from the executors' schedules there was a claim filed for depredations committed by the subjects of Holland, estimated on the schedules at $13,600, and I desire also to testify in order to show the total amount of the claims which have been allowed the estate of William Gray,

the present claims amounting to $122,982.03. These are claims that are at present in controversy.

(By Mr. WARNER:)

Q. French claims?
A. French claims which have been already paid over, and which are now the subject of this suit.
104 Q. Has anything been paid on account of the Holland claims by the Government?
A. I can't say positively.
Q. Have you any reason to suppose it was paid by the Government?
A. I can't say anything.
Q. Haven't you searched for that?
A. No, we have not.

(By Mr. HADLOCK:)

Q. Do you know the fact as to the amount?
A. I know the fact of the amount estimated on the schedule, but I haven't made a search.

(By Mr. GRAY:)

Q. Do you know that any has been paid?
A. I simply know that is on the schedule, that is all.
The WITNESS: Of the claims, exclusive of the present claims, there was paid to William Gray, or his estate, $416,661.41.

(By Mr. WARNER:)

Q. Is this total of the items which have been given?
A. The total of the items I gave.

(By Mr. HADLOCK:)

Q. Give the dates.
A. I have already given them, and this is the total amount of those items, $416,661.41, the total amount of those claims to which the present claims in controversy must be added, making $539,643.44.

(By Mr. HADLOCK:)

Q. Have you any paper before you that will show the estimate put upon the estate of William Gray from 1825 to 1829?
A. I have a copy of the paper which is presented by the complainants in this case, a copy of the schedule.
Q. I wish you to read it in evidence.
A. "Schedule of the undivided effects of the estate of William Gray, the 30th of September, 1828. Schedule A. List of outstanding accounts in William Gray's books of little or no value the 30th of September, 1828." Shall I read all the items?
MORTON, J.: Is it necessary to read this schedule all through, to take time for that?

Mr. HADLOCK: I desire that it be in evidence, but it is not necessary, perhaps, for Mr. Brooks to read it.

MORTON, J.: It has already been put in.

Mr. HADLOCK: I will not trouble your honor to hear it now.

The WITNESS: I should like to testify to the general summary of the face value of the claims.

Mr. HADLOCK: Well, you can do that.

The WITNESS: The face value of the claims is put down on this schedule as valued at $645,821.29.

Q. Do you know what was received from those outstanding claims?

A. There was received the sum of $416,661.41, exclusive of the amount in controversy, exclusive of the amount now pending before the Court of Claims.

Q. In that answer you include the spoliation claims?

A. I am on the spoliation claims alone now. The executors estimated the value of those at $1,000.

105 Q. Have you any knowledge as to the amount received by the executors of the William Gray estate?

A. Regarding the general estate or the claims?

Q. No; I mean now outstanding account.

A. Only from the schedules. The schedules show the face value of the residuary estate of William Gray to have been $1,094,459.52.

Q. At what date?

A. On the 30th of September, 1828, at which time this face value was estimated at the sum of $155,000.

Q. Do you know how much the executors received of that outstanding estate?

A. I only know as it regarded the spoliation claims, the various spoliation claims.

Q. Do you know as to other claims, the book account?

A. I do not, sir; only from this schedule and from the examination of the books of the executors, and the face value of the residuary estate. The whole face value must have been $2,225,223.20. The residuary estate, according to the schedule amounted to $1,094,459.52.

(By Mr. WARNER:)

Q. In your total of four hundred and odd thousand dollars received by the executors for these claims, you included, did you not, the sum of $108,904.04, allowed under the treaty with Spain?

A. Yes.

Q. Although there is no item corresponding with that on the schedule?

A. Yes, sir.

Q. Isn't it a fact, Mr. Brooks, that that sum was received before Mr. William Gray's death?

A. Yes, it is; but deducting that value it makes the sum of $307,000, inclusive of those claims on Spain, due to that estate, $307,760.37.

Q. Now, in answer to the question of your counsel what sums had been received by the executors for these claims, you answered, did

you not, upwards of $400,000, without including the ones from France now the subject of this suit?

A. Yes.

Q. And you included the $108,000 which had been paid Mr. William Gray before his death, did you not?

A. I was then speaking——

Q. You did include that, did you not?

A. Yes, through inadvertence.

Q. When you gave that testimony you knew it had been received by William Gray before his death, did you not?

A. Through inadvertence I included that sum. I prepared these sums, and I had but a short time yesterday, and I put in that $108,000. I had intended to put it in the awards and not in the amount paid. The amount paid was, I said, $307,760.37.

Q. Your memorandum book shows that that sum of $108,000 was never received by the executors but was received by Mr. William Gray, while living?

A. Yes; the official records from Washington show that.

Q. And you intended, in stating to the court the amount of money which had passed through the executors' hands, to include that in the total?

A. I don't say the executors stated the total amount, but through inadvertence I included that sum.

106 Q. But you understood the amount paid was what was included in those schedules?

A. No.

Q. Did you suppose it included sums Mr. Gray had received while living?

A. I had in mind the general amounts paid.

(By Mr. HADLOCK:)

Q. Of your own knowledge you don't know what sums Mr. Gray collected while alive, do you?

A. I do not know, sir. I have no knowledge.

Q. So that $108,000.00, so far as you know, may have been paid into his hands?

A. It may have been, so far as I know.

Mr. WARNER: If your honor please, this is the paper from which Mr. Brooks read, and which went into evidence,—"The sum awarded the estate of William Gray for claims under treaty with France," etc., and it included that $108,000 which had been paid, as the witness knew, to William Gray during his life, and never passed into the hands of the executors.

(By Mr. HADLOCK:)

Q. Mr. Brooks, can you state who are now the living descendants of William Gray?

A. They are the children of William R. Gray, deceased, and grandchildren.

Q. Name them if you can.

A. They are so numerous, sir, that I cannot name them without reference to the bill of complaint. They are the children also of Henry Gray and his grandson, who is myself, children of Horace Gray and the children of Mrs. Swett.

Q. Whom do you represent in this case?

A. I represent as administrator of my grandfather, Henry Gray, who is a son of William Gray, the elder.

Q. Henry Gray was a son of William Gray, the elder, to whom these awards had been made for claims against the Government?

A. Yes, sir.

Q. You represent Henry Gray?

A. Yes, sir.

Q. As the son of William Gray?

A. Of William Gray, the elder.

Mr. BROOKS: If your honor please, I desire to have the printed statement of claims and payments marked by your honor. This is an authenticated document by the Secretary of State concerning claims paid by Naples, Denmark and Holland.

(The papers were marked by the court "A," "B" and "C," respectively.)

Mr. HADLOCK: We rest, your honor.

MORTON, J.: This concludes all the testimony on both sides.

The several exhibits, or extracts therefrom, offered and admitted in evidence, are hereto annexed as a part of this report, and alphabetically marked.

Extract from Statement of Payment of Awards of the Commissioners Appointed under the Convention Between the United States and France, Concluded July 4, 1831. Washington: Government Printing Office, 1886, pp. 100–'1.

No. of certificate.	To whom certificate was issued.	Date of certificate.	Amount of certificate.	First, second, third, and fourth instalments; first payment, 20 per cent.	
				Date.	Amount.
313	Francis C. Gray, administrator of William R. Gray (memorial Nos. 533, 2880, 2611, 1246, 517, 521, 1238, 537, 534, 518, 532, 525, 1252, 1248, 1253, 523, 515, 528, 2942, 529, 1240, 519, 516).	May 21, 1836	$49,092 15	June 15, 1836	$9,818 43
314	Francis C. Gray (memorial Nos. 533, 2880, 2611, 1246, 517, 521, 1238, 537, 534, 518, 532, 525, 1252, 1248, 1253, 523, 515, 528, 2942, 529, 1240, 519, 516).	May 21, 1836	49,092 15	June 15, 1836	9,818 43
315	John C. Gray (memorial Nos. 533, 2880, 2611, 1246, 517, 521, 1238, 537, 534, 518, 532, 525, 1252, 1248, 1253, 523, 515, 528, 2942, 529, 1240, 519, 516).	May 21, 1836	49,092 16	July 1, 1836	9,818 43
316	Horace Gray (memorial Nos. 533, 2880, 2611, 1246, 517, 521, 1238, 537, 534, 518, 532, 525, 1252, 1248, 1253, 523, 515, 528, 2942, 529, 1240, 519, 516).	May 21, 1836	49,092 16	June 15, 1836	9,818 43
317	Francis C. Gray (memorial Nos. 533, 2880, 2611, 1246, 517, 521, 1238, 537, 534, 518, 532, 525, 1252, 1248, 1253, 523, 515, 528, 2942, 529, 1240, 519, 516).	May 21, 1836	10,335 19	June 15, 1836	2,067 04

First, second, third, and fourth instalments; second payment, 19.37 per cent.		Fifth instalment; third payment, 5 per cent.		Fifth instalment; fourth payment, 3.9578 per cent.		Sixth instalment, 8.8248 per cent.		Arrears of interest, 2.2145 per cent.		No. of certificate.
Date.	Amount.	Date.	Amount.	Date.	Amount.	Date.	Amount.	Date.	Amount.	
Sept. 26, 1836	$9,509 15	Apr. 15, 1837	$2,454 61	May 15, 1837	$1,942 97	Apr. 3, 1838	$4,332 28	Report 4895	$1,087 13	313
Sept. 26, 1836	9,509 15	Apr. 15, 1837	2,454 60	May 15, 1837	*1,942 98	Apr. 3, 1838	4,332 28	Report 4895	1,087 13	314
Sept. 7, 1836	9,509 13	Apr. 13, 1837	2,454 60	May 15, 1837	1,942 97	Apr. 4, 1838	4,332 28	Report 4895	1,087 13	315
Sept. —, 1836	9,509 13	Apr. 15, 1837	2,454 60	May 15, 1837	1,942 97	Apr. —, 1838	4,332 28	Report 4895	1,087 13	316
Sept. 26, 1836	2,001 93	Apr. 15, 1837	516 76	May 15, 1837	409 04	Apr. 3, 1838	912 06	Report 4895	228 86	317

* Paid $1,942.97.

108 B.

No. 2013.

UNITED STATES OF AMERICA,
DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I certify that the documents hereto annexed are true copies from the archives of this department.

In testimony whereof I, John W. Foster, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this twenty-sixth day of July, A. D. 1892, and of the Independence of the United States of America the one hundred and seventeenth.

[SEAL.] JOHN W. FOSTER,

(Naples.)

List of Awards Made by the Board of Commissioners, under Convention with Naples, in Favor of Francis C. and John C. Gray, Executors of William Gray, Showing the Amount of Each Separate Award.

No. 225.	Brig Victory	$14,566 52
226.	Brig Radius	15,388 11
227.	Brig Phœnix	10,2-9 08
228.	Ship Trent	41,474 50
229.	Schooner Louisiana	14,188 10
230.	Schooner Mary	5,056 21
231.	Brig Romp	2,277 00
232.	Ship Henry	3,160 09
233.	Schooner Nancy	3,695 36
234.	Schooner Oceanus	1,119 52
		$111,154 49

In accordance with the fifth article of the order of Jan. 27, 1835, it is decreed by the board that the sum of twenty per cent. be added to the above list, making the aggregate amount (—$111,154.49 + 20 ac. = $22,230.90) = $133,385.39.—(From the Journal of the Neapolitan Commission, March 17, 1835.)

109 (Denmark.)

The Results of Claims Presented to the Board of Commissioners, under the Convention with Denmark, Washington, March 28, 1833.

"Alphabetical list of vessels upon which allowances have been made, showing the full amount awarded in each case, and the parties among whom it is to be distributed; also the sums actually payable to the several parties on a *pro rata* reduction of all sums awarded to the amount of the funds."

* * * * * * *

	Sum awarded.	Payable on reduction.
Ship Brutus, Francis C. Gray and John C. Gray, executors of William Gray	$11,441 00	$3,561 02
Schooner Cremer	18,787 00	5,847 43
Brig Hope	10,000 00	3,112 50
Ship Horace	2,000 00	622 50
Barque Pacific	1,000 00	311 25
Barque William Gray	3,273 00	1,018 72
Total		$14,473 42

(Spain.)

From the Journal of Proceedings of the Commission under the "Act to Carry into Effect a Convention Between the United States and Spain, Concluded at Madrid on the Seventeenth Day of February, 1834.

"The claim of John C. Gray and Horace Gray of Boston, executors of William Gray, for indemnification in case of brig Otter, is allowed, and in full satisfaction thereof the board awards to said claimants the sum of $23,227.31."

"Jan. 31, 1838.—Ordered and decreed by the commission that twenty-eight and one-half per cent. (28½) be added to the amount of each and every of the awards allowed to claimants." * * *

* * * * * * *

Attest:

(Signed) JOHN J. MUMFORD.
(Signed) LOUIS D. HENRY.

110 (Copy.)

C.

Exhibit Offered in Evidence by Counsel for the Representative of Wm. R. Gray.

BOSTON, *Oct.* 8, 1828.

I request Francis C., John C. and Horace Gray, each of them, to apply my proportion of the proceeds of all the property mentioned in the preceding schedule, and of all other property which may

come into their hands as a part of the estate of the late William Gray, Esquire, to the payment of the balances due from me to the other residuary legatees, with interest in equal portions; the said balance being the sum of forty-seven thousand three hundred forty-two $\frac{10}{100}$ dollars to each of said legatees, viz: William R. Gray, Francis C. Gray, John C. Gray and Horace Gray, amounting in the whole to one hundred eighty-nine thousand three hundred sixty-eight $\frac{42}{100}$ dollars.

(Signed in quadrupl-ate) HENRY GRAY.

D.

Extract from Journal of Henry Gray, pages 45 and 46.

BOSTON, 10 *January*, 1827.

47. Notes payable—

My note to Wm. Gray, 14 Nov., 1822.....	$31,258 64
Int. on Wm. Gray's note, $91,080.72.....	13,322 70

I agree that the above is a copy of certain entries in the journal of Henry Gray.

J. W. WARNER,
For Certain Def't-.

111 E.

Extract from page 213 of Journal of Executors of William Gray.

BOSTON, *April* 30, 1828.

3	Estate of Wm. Gray to sundries: For balance, this account being a partial settlement divided and passed to credit of the following accounts, viz:	
112	Wm. R. Gray's patrimony for $\frac{1}{5}$ part thereof	$131,624 66
113	Henry Gray's patrimony for $\frac{1}{5}$ part thereof	131,624 66
114	F. C. Gray's patrimony for $\frac{1}{5}$ part thereof.....	131,624 66
115	John C. Gray's patrimony for $\frac{1}{5}$ part thereof.....	131,624 66
116	Horace Gray's patrimony for $\frac{1}{5}$ part thereof.....	131,624 66
		$658,123 30

I agree that the above is a copy of certain entries in the executors' books.

J. W. WARNER,
For Certain Def'ts.

F.

Extract from Journal of Executors of Wm. Gray, pp. 228, '9.

BOSTON, *Sept.* 30, 1828.

117	Sundries to estate Wm. Gray:		
	For the following undivided effects of the estate remaining this date, valued per schedule thereof on file, and each executor is charged for his portion of the same in patrimonial account, viz:		
	Real estate and other articles per Schedule A	$128,770 00	
	Notes payable to the executors outstanding, B	8,557 00	
	Balances (books) due to do. do., C	13,023 00	
	Wm. Gray's notes outstanding do., D	3,250 00	
	Wm. Gray's book balances do., E	250 00	
	Miscell. debts due estate not matter of book account, F	150 00	
	Claims on European governments, G	1,000 00	
		$155,000 00	
112			
112	Wm. R. Gray, patrimony for one-fifth of the above	$31,000 00	
113	Henry Gray, patrimony for one-fifth of the above	31,000 00	
114	F. C. Gray, patrimony for one-fifth of the above	31,000 00	
115	J. C. Gray, patrimony for one-fifth of the above	31,000 00	
116	Horace Gray, patrimony for one-fifth of the above	31,000 00	
			$155,000 00
117	Estate Wm. Gray to sundries:		
	For balance transferred to credit of the following accounts, being final settlements of estate:		
112	Wm. R. Gray, patrimony for one-fifth said balance	$37,396 39	
113	Henry Gray, patrimony for one-fifth said balance	37,396 39	
114	F. C. Gray, patrimony for one-fifth said balance	37,396 39	
115	J. C. Gray, patrimony for one-fifth said balance	37,396 39	
116	Horace Gray, patrimony for one-fifth said balance	37,396 40	
			186,981 96

113	Henry Gray's patrimony to Henry Gray:		
99	For balance, his private account settled this date, and transferred to former account		327,389 47
113	Sundries to Henry Gray's patrimony:		
	For balance of the latter account transferred for settlement with those persons whose accounts are here charged, in equal proportions for said balance:		
57	Wm. R. Gray, one-fourth part thereof	$47,342 11	
59	F. C. Gray, one-fourth part thereof..	47,342 11	
109	J. C. Gray, one-fourth part thereof..	47,342 11	
108	Horace Gray, one-fourth part thereof	47,342 11	
			189,368 42
112	Sundries to Wm. R. Gray's patrimony:		
	For balance, his P. ac. cancelled by his three notes charged to the following accounts:		
59	F. C. Gray, for Wm. R. Gray's note, this date, on demand, and interest.....	$6,264 38	
109	J. C. Gray, for Wm. R. Gray's note, this date, on demand, and interest.	6,264 38	
108	Horace Gray, for Wm. R. Gray's note, this date, on demand, and interest.....	6,264 38	
			18,793 14
113			
116	Sundries to Horace Gray's patrimony:		
	For balance, his patrimonial account cancelled by his two notes charged to the following account:		
59	F. C. Gray, Horace Gray's note, this date, on demand..... ...	$1,647 29	
109	J. C. Gray, Horace Gray's note, this date, on demand.....	1,650 00	
			3,297 29
119	Sundry accounts to cash:		
114	F. C. Gray's patrimonial account paid his balance amount..... .	$852 04	
115	J. C. Gray's patrimonial account paid his balance amount.....	236 65	
45	Sam. Dow, Jr., paid in full	1,400 00	
			2,488 69

I agree that the above is a copy of certain entries in the executors' books.

J. W. WARNER,
For Certain Def'ts.

G.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Supreme Judicial Court. In Equity.

WILLIAM GRAY, Administrator,
v.
WILLIAM GRAY BROOKS, Administrator, *et als.*

Respondents' Exceptions.

This cause was a bill for instructions brought by William Gray, administrator *de bonis non* of the estate of William Gray the elder, who died in 1825, asking the decree of the court to determine to whom certain awards paid by the Government of the United States to the estate of said William Gray the elder, for losses and spoliations committed by citizens of the French Republic prior to 1801, should be paid.

114 The facts in the cause are set forth in the pleadings and in the report of the evidence embraced in the report of the justice before whom the cause was heard, and which, so far as material, is made a part of this bill of exceptions.

At the hearing of the cause before the justice evidence was introduced by the respondent, William Gray Brooks, for the purpose of showing that a certain written instrument purporting to be an assignment from Henry Gray to his four brothers, William R. Gray, Francis C. Gray, John C. Gray and Horace Gray, ought to be set aside. Said evidence was admitted by the justice *de bene*.

The respondents, William Gray Brooks and others, requested the justice to report the entire case to the full court, but upon the request of the complainant the court made certain findings and rulings, and at the request of the said respondents reported the evidence taken before him at the trial of the cause. The justice in his report ruled that on the evidence offered and on the other facts as stated, said respondents have shown no ground for setting aside the written instrument of July 21, 1829, purporting to be an assignment from Henry Gray, or disturbing the accounts or valuations made by the parties in 1828 or 1829.

To this ruling of the court said respondents duly excepted, and ask to have their exceptions thereto allowed.

HARVEY D. HADLOCK,
Per W. G. B.
WILLIAM GRAY BROOKS,
Administrator.

March 3, 1893.—Exceptions allowed.
JAMES M. MORTON,
Justice Supreme Judicial Court.

115 [Endorsed:] No. —. William Gray, adm'r, *v.* William Gray Brooks, adm'r, *et al.* Report of evidence. Suffolk county.

116 The following are the opinions of the supreme judicial court for the Commonwealth, with the certificate of the reporter of decisions:

117 ROBERT CODMAN, Administrator,
vs.
WILLIAM G. BROOKS *et als.*

KNOWLTON, *J.*:

The plaintiff in this case, as administrator *de bonis non*, with the will annexed, of William Gray, has received a large sum of money appropriated by Congress under the statute of March 3, 1891, c. 540 (26 Sts. at Large, 862, 908), to the payment of claims for vessels and other property belonging to the testator illegally seized and condemned by the French government prior to the treaty of 1800 between France and the United States.

William Gray left six children, of whom five were residuary legatees under his will, and the other was otherwise provided for. The first question which we have to consider is whether this money is to be divided among the representatives of all his children or only among those who represent the residuary legatees. The act of March 3, 1891, after making appropriations of specific sums to a large number of persons by name, ends with a proviso as follows: "Provided that in all cases where the original sufferers were adjudicated bankrupts the awards shall be made on behalf of
118 the next of kin instead of to the assignees in bankruptcy, and the awards in cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represents the next of kin, and the courts which granted the administration respectively shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards." This proviso is of doubtful meaning. Some of its clauses seem to point to one intention on the part of Congress and some to another; but in determining what disposition is to be made of the moneys to which it refers, the whole statute is to be considered in connection with the previous legislation which it supplements.

It is very clear that the St. of January, 1885, c. 25 (23 Sts. at Large, 280), under which the Court of Claims acted in making to Congress the reports on which this part of the appropriation bill is founded, treats the French spoliation claims as property belonging to the representatives of the original sufferers. The legislation proceeds upon the theory that the original sufferers had valid claims against the French government which the United States might properly demand and recover for their benefit, and that when
119 the United States by the treaty of 1800 relinquished these claims for a valuable consideration there was an equitable right of property which Congress ought to recognize in favor of citizens wrongfully despoiled. It is equally clear that the Court of Claims whose reports to Congress were the foundation of the legis-

lation under which the payments were made treated these claims as property.

The statute of 1891 follows closely these reports of the Court of Claims. It departs from them only in failing to appropriate anything for the few claimants who represent assignees in bankruptcy and in adding the proviso. The substance and effect of the legislation is a following of the original act of 1885 and the reports of the Court of Claims under it in treating these claims as property belonging to the representatives of the original holders, except in those cases where the claims had passed to assignees in bankruptcy during the lifetime of those holders. For good reasons, doubtless, it was thought best not to attempt to revive proceedings in cases in bankruptcy, most of which were ended nearly a century ago, nor to make awards of large sums to those who long ago bought their claims, generally for nominal sums, in the settlement of estates in bankruptcy.

By express provision the payments in such cases are to be made
120 for the benefit of the next of kin. This is the only express modification of the theory of the Court of Claims. There would seem to have been little necessity for this provision after the claims in favor of assignees in bankruptcy and their representatives had been stricken from the appropriation bill; but, perhaps, as has been decided by the Court of Claims (Henry's case, 27 Ct. of Cl., 142), Congress intended this provision as a direction to that court in subsequent cases, and very likely a more important object of the provision was to cover any cases among the large number included in the appropriation bill in which it might subsequently appear that there had been an assignment in bankruptcy and in which a claim might be made against the administrator under the assignment. Conformably to the views above expressed, it was held in Balch *v.* Blagge, 157 Mass., 144, that under this statute the next of kin must be determined as of the date of the death of the original sufferer. The precise question now before us, which was not decided in that case, is whether the proviso takes the money in each case entirely out of the estate of the deceased person to whose administrator it is appropriated and divides it equally among the next of kin, notwithstanding the existence of a will which would dispose of
121 it differently, or whether the whole statute taken together indicates a purpose on the part of Congress to have the property administered as the estate of the deceased sufferer according to law. We think the principles established and the reasons given in Balch *v.* Blagge, *ubi supra*, require us to hold in the present case that the money goes to the residuary legatees under the will of William Gray, subject to the assignment made by one of them.

Among the persons to whom appropriations are made in this statute several are described as administrators with the will annexed, which is an indication that the appropriation is of money belonging to the estate and is at least a suggestion that it is to be administered under the will. Except in case of bankruptcy there is no express provision that the money is to go to the next of kin, but the Court of Claims is required to certify to the Secretary of the Treasury before payment that the personal representatives repre-

sent the next of kin. This would seem to have been inserted by way of caution to make it certain that the one receiving the award stands as successor to the original sufferer in the settlement of his estate after his death and represents the next of kin. Such an one is the person through whom the next of kin must obtain
122 whatever of personal property they receive from the estate of their deceased relative. Even if there is a will in which they are not mentioned as legatees, he represents them in a sense, for he stands in the place of their relative in reference to his estate, and if, notwithstanding the will, they make a claim by reason of their relationship they can obtain nothing except through him.

The last part of the proviso requires *that* a certificate from the court which granted the administration that the legal representatives have given adequate security for the legal disbursement of the award. We are of opinion that this can mean nothing else than that kind of security which courts that grant administration of the estates of deceased persons are accustomed to take. Such courts could not lawfully require security except in reference to the property of the deceased person, and then only to dispose of it according to the law of the State where the administration is granted. Congress could not, if it would, impose upon such courts the duty of requiring any other kind of security, and there is nothing in this statute to indicate that any other kind of security than an ordinary probate bond was referred to. The object of the provision
123 seems to be to guard against the payment of large sums of money to administrators whose official bonds are for small amounts. Doubtless Congress did not contemplate the existence of debts which can be enforced at this late day against the estates of the personal sufferers. It is unnecessary now to decide whether if such a debt against any person has been kept alive it can be collected out of money received under this statute, but the different parts of the proviso as well as the whole legislation on the subject point to the conclusion that this money is to be disposed of under the will of the original sufferer, if he left one, and, if not, it is to pass under the statute of distributions, and in either case is assets protected by the original probate bond of an administrator or an executor.

The same conclusion has been reached by the courts of Pennsylvania and Connecticut. *In re* Clement's estate, 150 Penn. St., 85; *In re* Leffingwell's estate, 25 Atl. Rep., 455. The supreme court of the District of Columbia holds otherwise. Gardner *v.* Clark, 20 Wash. L. R., 2.

It is necessary to consider the effect of the assignment of Henry Gray to his four brothers. That assignment was for a valuable consideration, and included all his right, title, and interest "in
124 and to all notes, balances, claims, and demands and all other property, real and personal, mentioned in the said schedules and all not therein mentioned, if any such there be, to which I am or may become in any way entitled as one of the residuary legatees or one of the executors of said William Gray or in any manner by or through him." In the schedule referred to, among "the claims

on European governments for spoliation on property owned and insured by William Gray from 1796 to 1811," are the following :

"Amount of claims on France prior to 1800 *p.* list.... $260,500
After 1800 *p.* list..... .... 162,000"

The claims mentioned in the first item are claims of the kind provided for by United States St. of January, 1885, c. 25, § 1 (23 Sts. at Large, 280), and this item undeniably was intended to include the claims for payment of which the appropriations considered in the present case were made. We see no reason why Henry Gray could not assign all his interest in these claims. Kingsbury *v.* Burrell, 151 Mass., 199; Jernegan *v.* Osborne, 155 Mass., 207.

We have discovered no error in the rulings or findings of the justice before whom the case was tried. It was not contended that there was any fraud connected with this assignment. Whether
125 the executors made some mistake in their estimate of the value of these claims is immaterial, and on any theory the consideration of the assignment was adequate. Henry Gray's share, namely, one-fifth, is to be equally divided among his four brothers. The administrator of the estate of Horace Gray the elder claims only for the benefit of the assignees of his intestate. The money in the hands of the plaintiff will be paid over to the legal representatives of William R. Gray, Francis C. Gray, and John C. Gray, deceased, and the assignees of Horace Gray, deceased.

Decree accordingly.

126 ROBERT CODMAN, Administrator,
vs.
WILLIAM G. BROOKS *et al.*

Dissenting Opinion.

FIELD, *C. J.*:

After a good deal of hesitation I have come to the conclusion that the most reasonable conclusion of the proviso under consideration is that while the first clause is confined to cases where the original sufferers were adjudicated bankrupts during their lives, the second clause must be applied to all cases where the original sufferers were natural persons as distinguished from corporations; that the creditors of such sufferers are in all cases to be excluded from receiving the money; that the personal representatives of such sufferers receive money, not as assets generally of the estates of the original sufferers, but as representing their next of kin and in trust for the next of kin; that the words "next of kin" have the same meaning in both clauses of the proviso, and that these words in either the legal or the popular sense do not include legatees.

Whether the words "next of kin" are held to mean nearest
127 kindred or distributees under our statutes in force when William Gray died is, I understand, immaterial, as he left no widow surviving him and no issue of deceased children. The representatives of his estate, I think, hold the money as intestate prop-

erty for the benefit in equal shares of the estates of all his children the assignees of any child taking that child's share.

Mr. Justice Allen concurs in this view.

128 COMMONWEALTH OF MASSACHUSETTS:

BOSTON, *October* 6, 1893.

I certify the annexed to be true copies of the opinions of the supreme judicial court in the case of Robert Codman, administrator, *vs.* William G. Brooks *et als.*, decided on the 12th day of September, 1893.

GEORGE F. TUCKER,
Reporter of Decisions.

129 The following is the original citation and acknowledgment of service.

130 Commonwealth of Massachusetts to Robert Codman, administrator, with the will annexed, of the estate not already administered of William Gray the elder; John C. Ropes, John C. Gray, and John L. Gardner, as executors of the will of John C. Gray the elder; Russell Gray, as administrator of the estate of Horace Gray the elder, and the said John C. Gray and Russell Gray personally; William E. Coffin and William S. Bullard, assignees of Horace Gray the elder; Edward Gray and Isa E. Gray, executors of the will of William Gray, and the said Edward Gray, as administrator of the estate of William R. Gray and administrator, with the will annexed, of Francis C. Gray; Francis C. Gray, Mary C. Gray, Samuel S. Gray, Reginald Gray, Morris Gray, Horace Gray, and Elizabeth C. Gray, all of Boston, in the county of Suffolk, in the district of Massachusetts; Harriet Gray of Wellesley, in the county of Middlesex, in said district; Horace Gray and Ellen Gray, both of the city and State of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme judicial court of the Commonwealth of Massachusetts, wherein Wm. Gray Brooks, adm'r, and others are plaintiffs in error and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Walbridge A. Field, chief justice of the supreme judicial court of the Commonwealth of Massachusetts, this thirtieth day of September, in the year of our Lord one thousand eight hundred and ninety-three.

WALBRIDGE A. FIELD,
Chief Justice, &c.

131 BOSTON, *Oct. 2nd*, 1893.

Due service of the within citation is hereby acknowledged and accepted.

JOHN C. ROPES,
JOHN C. GRAY, &
JOHN L. GARDNER,
Ex'rs of the Will of John C. Gray the Elder;
WILLIAM E. COFFIN &
WILLIAM S. BULLARD,
Assignees of Horace Gray the Elder;
EDWARD GRAY &
ISA GRAY,
Ex'rs of the — William Gray;
EDWARD GRAY,
Adm'r of the Estate of William R. Gray and Adm'r, with the Will Annexed, of Francis C. Gray;
FRANCIS C. GRAY,
HORACE GRAY,
Of New York;
ELLEN GRAY,
MARY C. GRAY,
SAMUEL S. GRAY,
REGINALD GRAY,
MORRIS GRAY,
By their attorney of record, JOSEPH B. WARNER.

HORACE GRAY,
ELIZABETH C. GRAY,
HARRIET GRAY,
JOHN C. GRAY,
RUSSELL GRAY,
By their attorney of record, JOHN C. GRAY.

RUSSELL GRAY,
Administrator of the Estate of Horace Gray the Elder.
ROBERT CODMAN,
Administrator,
By RICHARD H. DANE,
His Attorney of Record.

132 COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

I, John Noble, clerk of the supreme judicial court within and for said county of Suffolk, hereby certify that the foregoing are true copies of—

I. The record in the case of Robert Codman, adm'r, *v.* William G. Brooks, adm'r, *et al.*

II. The assignments of errors.

III. The report of the presiding justice to the full court.

IV. Report of evidence.

V. The opinions of the full court, all annexed to and transmitted with the record.

VI. And of all the proceedings in said case, with all things concerning the same, together with—

VII. The original citation, and—

VIII. The acknowledgment of service thereon.

In witness whereof I have hereto set my hand and affixed the seal of said supreme judicial court this sixth day of October, [SEAL.] in the year of our Lord one thousand eight hundred and ninety-three.

JOHN NOBLE, *Clerk.*

133 Know all men by these presents that we, Alfred Bowditch, of Boston, in the county of Suffolk, administrator of the estate of Lucia G. Swett; Lucia G. Alexander, now sojourning in Florence, in the Kingdom of Italy; William Gray Brooks, of said Boston, administrator of the estate of Henry Gray; F. Elizabeth Gray, and Ellen C. Brooks, as principals, and Charles P. Bowditch and Alfred Bowditch, both of said Boston, as sureties, are held and firmly bound unto Robert Codman, administrator with the will annexed of the estate not already administered of William Gray the elder; John C. Ropes, John C. Gray, and John L. Gardner, as executors of the will of John C. Gray the elder; Russell Gray, as administrator of the estate of Horace Gray the elder, and the 134 said John C. Gray and Russell Gray personally, William E. Coffin and William S. Bullard, assignees of Horace Gray the elder; Edward Gray and Isa E. Gray, executors of the will of William Gray, and the said Edward Gray, as administrator of the estate of William R. Gray and administrator, with the will annexed, of Francis C. Gray; Francis C. Gray, Mary C. Gray, Samuel S. Gray, Reginald Gray, Morris Gray, Horace Gray, and Elizabeth C. Gray, all of Boston, in the county of Suffolk, in the district of Massachusetts; Harriet Gray, of Wellesley, in the county of Middlesex, in said district; Horace Gray and Ellen Gray, both of the city and State of New York, in the full and just sum of one thousand dollars ($1,000), to be paid to the said obligees, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the thirtieth day of Sep- 135 tember, in the year of our Lord one thousand eight hundred and ninety-three.

Whereas lately, at a term of the supreme judicial court, held at Boston, within and for the county of Suffolk and Commonwealth of Massachusetts, on the twenty-fifth day of September, A. D. 1893, in a suit depending in said court between Robert Codman, administrator, and William Gray Brooks, administrator, and others, a decree was rendered against the said William Gray Brooks, administrator, and others, and the said William Gray Brooks, administrator, and others, having procured a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the

aforesaid suit, and a citation directed to the said Robert Codman, administrator, and others, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next:

136 Now, the condition of the above obligation is such that if the said William Gray Brooks, administrator, and others, shall prosecute said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

ALFRED BOWDITCH, [SEAL.]
Administrator.
LUCIA G. ALEXANDER, [SEAL.]
By CHARLES P. BOWDITCH, } *Att'ys.* [SEAL.]
ALFRED BOWDITCH, }
WILLIAM GRAY BROOKS. [SEAL.]
F. ELIZABETH GRAY. [SEAL.]
ELLEN C. BROOKS. [SEAL.]
CHARLES P. BOWDITCH. [SEAL.]
ALFRED BOWDITCH. [SEAL.]
——— ———. [SEAL.]
——— ———. [SEAL.]
——— ———. [SEAL.]

Signed, sealed, and delivered in presence of—
W. H. BROOKS.

Approved:
W. H. BROOKS.

Bond approved by—
WALBRIDGE A. FIELD,
Chief Justice of the Supreme Judicial Court of Massachusetts.

A true copy of said bond.
Attest:
JOHN NOBLE,
Cl'k Sup. Jud. Ct.

Endorsed on cover: Case No. 15,423. Massachusetts supreme judicial court. Term No., 284. William Gray Brooks, administrator of the estate of Henry Gray, deceased, *et al.*, plaintiffs in error, *vs.* Robert Codman, administrator, with the will annexed, of the estate not already administered of William Gray the elder, *et al.* Filed October 11, 1893.

FRANCIS V. BALCH *vs.* HENRY W. BLAGGE & another.

Norfolk. May 26, 1892.—September 16, 1892.

Present: FIELD, C. J., ALLEN, HOLMES, KNOWLTON & BARKER, JJ.

French Spoliation Claims—Award—Distribution of Money —Next of Kin.

APPEAL, by Henry W. Blagge and Susan B. Samuels, from a decree of the Probate Court made on February 3, 1892, granting the petition of Francis V. Balch, administrator *de bonis non* with the will annexed, of Henry Hatch, and ordering that a certain portion of the funds in their hands, as administrators *de bonis non* with the will annexed of Crowell Hatch, be paid to Balch, as administrator aforesaid.

Hearing before *Barker*, J., who, at the request of both parties, reserved the case on the petition, decree, order of distribution, and agreed statement of facts, for the full court. The facts appear in the opinion.

F. Rackemann, (*F. V. Balch* with him,) for the petitioner.

J. B. Warner also filed a brief in support of the petitioner.

G. A. King, for the respondents.

W. G. Russell & J. Fox also submitted a brief in support of the respondents.

FIELD, C. J. It appears that Crowell Hatch, late of Roxbury in this Commonwealth, died in the year 1805, leaving three daughters and one son. By his will all his property was given in equal shares to the four children. Of his estate the appellants are administrators *de bonis non* with the will annexed. Of each of the three daughters there are descendants now living. The son, Henry Hatch, of whose estate the petitioner is administrator *de bonis non* with the will annexed, died, leaving a widow but no issue. He left by his will the residue of his estate to his widow, who never afterwards married. Crowell Hatch was never bankrupt, and his estate and the estates of his four children have always been and are solvent. The appellants, as administrators of the estate of Crowell Hatch, have received from the United States $1050 for the loss of the brig Mary, being one of the claims on account of spoliations committed by the French government prior to July 31, 1801, which were reported to Congress by the Court of Claims, pursuant to the statute of the United States of January 20, 1885, (23 U. S. Sts. at Large, 283,) and for the payment of which Congress made appropria-

tions by the statute of March 3, 1891 (26 U. S. Sts. at Large, 862, 900). By the statutes of Massachusetts in force when Crowell Hatch died, his estate, after the payment of debts and the expenses of administration, would have been distributed, if intestate, equally among his children; St. 1789, c. 2; St. 1805, c. 90, §§ 1, 2; and this is the provision of his will.

The difficulty of determining the distribution to be made of the money received from the United States arises from the last paragraph of the statute of the United States of March 3, 1891, which is in these words: "Provided that in all cases where the original sufferers were adjudicated bankrupts the awards shall be made on behalf of the next of kin instead of to assignees in bankruptcy, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represents [*sic*] the next of kin, and the courts which granted the administrations respectively shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards."

The statute of the United States of January 20, 1885, in § 1, provided: "That such citizens of the United States, or their legal representatives, as had valid claims to indemnity upon the French government arising out of illegal captures, detentions, seizures, condemnations, and confiscations prior to the ratification of the Convention between the United States and the French Republic concluded on the thirtieth day of September, eighteen hundred, the ratifications of which were exchanged on the thirty-first of July following, may apply by petition to the Court of Claims, within two years from the passage of this act, as hereinafter provided," etc. Section 3 is as follows: "That the court shall examine and determine the validity and amount of all the claims included within the description above mentioned, together with their present ownership, and, if by assignee, the date of the assignment, with the consideration paid therefor," etc. Section 6 is as follows: "That on the first Monday of December in each year the court shall report to Congress, for final action, the facts found by it, and its conclusions in all cases which it has disposed of and not previously reported. Such finding and report of the court shall be taken to be merely

advisory as to the law and facts found, and shall not conclude either the claimant or Congress; and all claims not finally presented to said court within the period of two years limited by this act shall be forever barred; and nothing in this act shall be construed as committing the United States to the payment of any such claims."

Under this act the Court of Claims proceeded to examine the claims presented, and its decisions of some of the questions arising before that court are found in *Gray* v. *United States*, 21 Ct. of Cl. 340; *Holbrook* v. *United States*, 21 Ct. of Cl. 434; *Cushing* v. *United States*, 22 Ct. of Cl. 1, 28; *Hooper* v. *United States*, 22 Ct. of Cl. 408; *The Ship Betsey*, 23 Ct. of Cl. 277; *The Brig Hiram*, 23 Ct. of Cl. 431, and 24 Ct. of Cl. 31; *The Ship Jane*, 24 Ct. of Cl. 74; *The Ship Ganges*, 25 Ct. of Cl. 110.

The decisions of that court upon the persons who should be petitioners, and upon the effect of the findings of that court, are shown by an extract from the opinion in *The Ship Jane*, 24 Ct. of Cl. 74, 80, which is as follows:

"The youngest of these claims are now more than eighty-eight years old. The original claimants were merchants, ship-owners, underwriters, partners in trade, joint stock associations, and incorporated insurance companies. Only three of the original claimants have thus far appeared, and they, it is needless to say, are bodies corporate. The individuals who lost by French spoliations were generally men of mature years. Some transferred their claims; others became insolvent, and their assets passed to assignees in bankruptcy or became subject to the operation of divers State insolvent laws; some bequeathed their claims by will; some died intestate of them; all have long since passed away. Those claims which passed to assignees in bankruptcy have not remained in the hands of living witnesses, for those assignees have died, and their claims have passed to their administrators, who have, in many cases, likewise died, and such claims have again changed hands and passed to the administrators of the administrators. The partnerships were long ago dissolved, leaving the assets in the custody of the surviving partners, and they have long since died, leaving their administrators to represent both their own next of kin and the next of kin of the other partners. The joint stock associations have been wound up or merged in incorporated

tions by the statute of March 3, 1891 (26 U. S. Sts. at Large, 862, 900). By the statutes of Massachusetts in force when Crowell Hatch died, his estate, after the payment of debts and the expenses of administration, would have been distributed, if intestate, equally among his children; St. 1789, c. 2; St. 1805, c. 90, §§ 1, 2; and this is the provision of his will.

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advisory as to the law and facts found, and shall not conclude either the claimant or Congress; and all claims not finally presented to said court within the period of two years limited by this act shall be forever barred; and nothing in this act shall be construed as committing the United States to the payment of any such claims."

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"The youngest of these claims are now more than eighty-eight years old. The original claimants were merchants, ship-owners, underwriters, partners in trade, joint stock associations, and incorporated insurance companies. Only three of the original claimants have thus far appeared, and they, it is needless to say, are bodies corporate. The individuals who lost by French spoliations were generally men of mature years. Some transferred their claims; others became insolvent, and their assets passed to assignees in bankruptcy or became subject to the operation of divers State insolvent laws; some bequeathed their claims by will; some died intestate of them; all have long since passed away. Those claims which passed to assignees in bankruptcy have not remained in the hands of living witnesses, for those assignees have died, and their claims have passed to their administrators, who have, in many cases, likewise died, and such claims have again changed hands and passed to the administrators of the administrators. The partnerships were long ago dissolved, leaving the assets in the custody of the surviving partners, and they have long since died, leaving their administrators to represent both their own next of kin and the next of kin of the other partners. The joint stock associations have been wound up or merged in incorporated

companies, leaving behind them obscure questions as to whether the claims passed to the new companies, or reverted to the original shareholders, or vested in the survivor of them for the benefit of all. A majority of the incorporated companies have likewise ceased to exist, and their claims are in the hands of receivers either for the benefit of creditors or of stockholders. Then again, many, if not all, of such creditors and stockholders have died or become insolvent and their interests have passed into the hands of other administrators and assignees in bankruptcy.

"Into this labyrinth of unknown and unascertainable rights and equities the court has not attempted to enter. What it has endeavored to do is to ascertain the person in whom the legal title and custody exist; that is to say, the legal representative who in an ordinary suit at law or proceeding in equity would be deemed the proper party to maintain an action for the recovery of similar assets of the original claimants. In the cases of individual owners or underwriters the court has required a present claimant to file his letters of administration and prove to the satisfaction of the court that the decedent whose estate he has administered was the same person who suffered loss through the capture of a vessel. *The Ship Betsey*, 23 Ct. of Cl. 277. In cases of partnership the court has required evidence of survivorship, and has allowed only the administrator of the survivor to prosecute the claim. In cases of bankruptcy, it has held, under the decisions of the Supreme Court, that the claim passed to the assignee, and that on his death it passed to his administrator (*Erwin's case* 97 U. S. 392; *Richards* v. *Maryland Ins. Co.* 8 Cranch, 84), and where the evidence has shown the bankrupt estate to be still unsettled, the court has held the legal title to be still vested in the assignee. In cases of incorporated companies no longer in existence, the court has required only the decree of a court of competent jurisdiction transferring their rights of action to the hands of a receiver.

"In none of these cases has the court assumed to determine who were the next of kin of a deceased claimant; nor whether there are any; nor in what proportion were the several interests of partnership owners; nor whether creditors or descendants have the superior equity; nor whether the children of a bankrupt are entitled to a residue of his estate; nor whether

the receiver of a defunct corporation represents creditors or stockholders. In other words, the court has not assumed to determine what persons are legally or equitably entitled to receive the money which Congress may hereafter appropriate for the discharge of these claims."

The Court of Claims from time to time reported its findings to Congress. With reference to the Appropriation Act of March 3, 1891, there are reported the following decisions of that court: Adams' Case, 26 Ct. of Cl. Rep. 249; Elbridge's Case, 26 Ibid, 253; Adams' Case, 26 Ibid, 290; Henry's Case, decided January 25, 1892.

In this last case the court says: "In pursuance of this act," that is the original act, "the court proceeded to investigate such cases as were brought before it, and reported to Congress their conclusions of fact and of law in each case. Among the claimants were several assignees, or representatives of assignees, of original sufferers who had been declared bankrupts, and the court reported in those cases that the assignees, or representatives of the assignees, were entitled to receive from the United States the sum found to be the amount of the losses.

"In Congress an appropriation bill was drawn and printed containing appropriations for all persons named in the reports of the Court of Claims. From that bill were stricken out all appropriations to assignees in bankruptcy, so far as their representative character appeared in the language of the act. This is a decided indication that Congress did not intend to pay assignees in bankruptcy.

"To provide for future cases of like kind they added the proviso now under consideration. It was quite natural that they should designate the findings of the Court of Claims as 'awards.' The reports in spoliation cases are not judgments and are to be taken to be merely advisory as 'to the law and facts found.' This is so by reason of the express provision of the Spoliation Act, and is not applicable to cases under the general jurisdiction of the court. The findings in spoliation cases are in the nature of awards and may be properly so designated. To them the word applies with more propriety than to anything in the act itself.

"We hold that the proviso means that in all future reports to Congress the court shall regard the administrator of the original sufferer, representing the next of kin, as entitled to

the amounts found due instead of the assignees in bankruptcy wherever the original sufferers were declared bankrupts.

"The court will, however, find the fact of adjudication in bankruptcy and the appointment of assignees, and will report the same for the information of Congress.

"If the administrator obtains the consent of the assignee in bankruptcy in this and other cases now pending he may come in on motion and be substituted as claimant."

In examining the Appropriation Act of March 3, 1891, 26 St. at Large, pp. 897–908, it will be found that, with few exceptions, the persons to whom the sums appropriated are the administrators of the estates of the original sufferers, or of the estates of assignees of the original sufferers, when the assignees were in fact assignees for value, or of the surviving partners of the original sufferers when they were a partnership. Some are executors or surviving executors of the wills of original sufferers, and the administrators are often designated as administrators *de bonis non*, and sometimes with the will annexed. There are six instances in the act in which the appropriations are to corporations, and, in three of these, the corporations are described as administrators, viz.: On the schooner Mary, "The Rhode Island Hospital Trust Company, three thousand three hundred dollars." On the brig Mary, "John Stewart, receiver of the Baltimore Insurance Company, eleven thousand dollars." On the schooner Emily, "John Stewart, receiver of the Baltimore Insurance Company, twelve thousand eight hundred and sixty dollars." On the ship Triumph, "Safe Deposit and Trust Company of Baltimore, administrator of Alexander Maculer, two thousand three hundred dollars." On the ship Raven, "The Pennsylvania Company for Insurance on Lives and Granting Annuities, administrators of Thomas M. Willing, deceased, surviving partner of Willing & Francis, seven hundred and eighty-four dollars." On the schooner Frederick, "The Union Trust Company of New York, administrator of Jacob Doty, deceased, twenty-one thousand eight hundred and thirty dollars." There is one appropriation to a trustee, viz: On the ship Rosanna, "James S. Humbird, trustee, and so forth, sixty-six thousand five hundred and sixty dollars." Congress seems generally to have approved the view of the law taken by the Court of Claims, except in cases "where the original sufferers were adjudicated bankrupt."

It is plain that the persons named in the act are to be paid the sums of money therein appropriated, if they bring themselves within the terms of the proviso. The substantial difference between the Appropriation Act and the reports of the Court of Claims, which were then before Congress, is that all adjudications to assignees in bankruptcy were stricken out of the Appropriation Bill, "so far as their representative character appeared in the language of the act." The proviso may well be taken to mean that in the future the Court of Claims shall make no awards in favor of the assignees of bankrupts when the original sufferers had become bankrupt, but the proviso does not deal with the bankruptcy of other persons than the original sufferers. The act itself regards the administrators or executors of the estates of the original sufferers as the persons to whom the money should be paid when the individual claimant is a natural person in distinction from a corporation, and the proviso applies in terms to such cases. The Court of Claims had decided that an insurer who had paid a loss was an original sufferer to the extent of the money paid, and that certain assignees for value from an original sufferer must be regarded as the owners of the claims whose representatives could prosecute them. Holbrook's Case, 21 Ct. of Cl. Rep. 434, Adams' Case, 26 Ct. of Cl. Rep. 249, and the act made appropriations accordingly. The personal representatives of legal representatives of an individual claimant must usually, if not always, be the executor or administrator of his estate, and the next of kin must be the next of kin of the original sufferers whom such executor or administrator can represent, and the court which granted the administration is the court to certify "that the legal representatives have given adequate security for the legal disbursement of the awards." As the next of kin are the next of kin of the original sufferer to be represented usually, if not always, by the administrator or executor of his estate, we think that the next of kin must be ascertained as of the death of the original sufferer. This is the general rule when next of kin take property by bequest or descent. The Court of Claims dealt with these claims as property after the manner of the Alabama and other claims. Wilson v. Heard, 140 U. S. 529. Congress, so far as it made appropriations for the payment of the claims, appears to have so dealt with them, except in the case of the bankruptcy of the original sufferers. The proviso concerning

the next of kin may perhaps be taken to indicate that Congress did not intend that the awards should be paid to or for the benefit of the creditors of the original sufferers, but still, Congress regarded the money to be paid as a part of the estates of the original sufferers. Congress did not concern itself with the bankruptcy of the next of kin, or with their creditors. If Congress had intended that in all cases the awards should be paid to or for the benefit of these next of kin of the original sufferers who were living at the date of the act, or at the date of the awards, it would have been easy to say so in a few words. In the case of a partnership the money is to be paid to the administrator or executor of the estate of the surviving partner, but it must, we think, be taken to belong to the estates of the several partners, according to their proportionate interests. It is not necessary in the present case to determine whether by next of kin Congress meant nearest kindred, or the distributees of personal property, who at the time of the death of the original sufferers, would take intestate property under the laws of their domicile, or legatees under wills when the original sufferers left wills; it is not even necessary in the present case to determine whether the creditors of the estate of Crowell Hatch are excluded, because it does not appear that there were any. It is agreed that his estate has always been solvent, and if there are creditors they must long ago have been paid in full. It is probable that it never occurred to Congress that, except in case of bankruptcy, there could be existing creditors who, under the laws of the domicile of the original sufferers, would now have valid claims against their estates. We assume, however, that it was the intention of Congress that the administrators should receive the money solely for the next of kin of the original sufferers. We are of opinion that the next of kin are to be ascertained as of the date of the death of Crowell Hatch, whichever of the meanings suggested is regarded as the true construction of the phrase "next of kin."

Since the argument of this case, the Supreme Court of Pennsylvania has rendered a decision which takes a similar view of the meaning of the proviso. *In re* Clement's Case, 24 Atlantic Rep. No. 13, p. 631. The decision of the Supreme Court of the District of Columbia is *contra*. Gardner v. Clark, 20 Wash. L. R 62. *Decree affirmed.*

Office Supreme Court, U. S.
FILED.
OCT 16 1895
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

BLAGGE *et al., Adm'rs,*
vs.
BALCH, *Adm'r.* } No. 177.

FOOTE *et al.*
vs.
THE WOMEN'S BOARD OF MISSIONS. } No. 207.

BROOKS, *Adm'r, et al.*
vs.
CODMAN, *Adm'r.* } No. 284.

MOTION.

And now come the parties in the several cases named above and represent to the Court that each of said cases involves the construction of the act of Congress of March 3, 1891, being chapter 540 of the acts of that year, by which money was appropriated for the payment of awards made by the Court of Claims on claims for indemnity for spoliations committed by the French.

That the principal questions in each of said cases are the questions whether, under the last paragraph of said act, the money appropriated has passed as a part of the estate of the original sufferers by will or intestacy, or was appropriated directly to next of kin, and, if the latter, how such next of kin are to be determined.

That the cases are so far identical that the arguments in

each case must be in great part the same, and that it would greatly save the time of the Court and be greatly for the convenience of counsel if all the cases could be heard together.

Wherefore we ask this honorable Court to order the cases above named to be heard together whenever the case first above named shall be reached for argument in its order.

F. V. BALCH,
F. RACKEMANN,
By F. V. BALCH,
GEO. A. KING,
Counsel in Blagge vs. Balch, for Plaintiff in Error.

WILLIAM WARNER HOPPIN,
For Plaintiff in Error in No. 207.

JOHN W. ALLING,
Per JAMES H. WEBB,
JAMES H. WEBB,
For Defendant in Error in No. 207.

J. B. WARNER,
For Certain Defendants in Error in No. 284.

JOHN C. GRAY,
For Certain Defendant in Error in No. 284.

HARVEY D. HADLOCK,
Counsel for Wm. Gray Brooks et al. in No. 284.

W. G. RUSSELL,
Counsel for Lucia G. Alexander et al.,
Plaintiffs in Error in No. 284.

[Endorsed :] Case No. 15,170. Supreme Court U. S., October term, 1895. Term Nos., 177, 207, 284. Blagge *et al.*, adm'rs, *vs.* Balch, adm'r; Foote *et al. vs.* Women's Board of Missions, and Brooks, adm'r, &c., *vs.* Codman, adm'r. Stipulation that numbers 207 and 284 be heard with No. 177 when the latter is reached. Office Supreme Court U. S. Filed Oct. 16, 1895. James H. McKenney, clerk.

Supreme Court of the United States.

HENRY W. BLAGGE AND SUSAN B. SAMUELS,
Administrators, Plaintiffs in Error,
v.
FRANCIS V. BALCH, *Administrator.*

MOTION TO ADVANCE.

And now comes Francis V. Balch, the defendant in error, and moves that said cause be advanced upon the docket of this Honorable Court, and that the same be set down to be argued upon some day fixed by the Court.

This case involves the construction of the Act of Congress relating to what are known as the French Spoliation Claims, passed in 1891 (26 U. S. Statutes at Large, 862), and the proviso rider attached to that act, p. 908.

The act was as follows: —

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated, out of any money in the treasury not otherwise appropriated, to supply deficiencies in the appropriations for the fiscal year eighteen hundred and ninety-one, and for prior years, and for other objects hereinafter stated, namely: —

. . . . . .

SECT. 4. To pay the findings of the Court of Claims on the following claims for indemnity for spoliations by the French prior to July thirty-first, eighteen hundred and one, under the act entitled 'An act to provide for the ascertainment of claims of American citizens for spoliations com-

mitted by the French prior to the thirty-first day of July, eighteen hundred and one,' namely : —

. . . . . .

H. W. Blagge, administrator, and Susan B. Samuels, administratrix of Crowell Hatch, one thousand dollars.

H. W. Blagge, administrator, and Susan B. Samuels, administratrix of Crowell Hatch, one thousand dollars.

Henry W. Blagge and Susan B. Samuels, administrators of Crowell Hatch, three hundred dollars."

(Here follow many other awards in similar form to the plaintiffs in error, and to others, aggregating over one million three hundred thousand dollars.)

"Provided, That in all cases where the original sufferers were adjudicated bankrupts the awards shall be made on behalf of the next of kin instead of to assignees in bankruptcy, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the secretary of the treasury that the personal representatives on whose behalf the award is made represents [*sic*] the next of kin, and the courts which granted the administrations, respectively, shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards.

Approved, March 3, 1891."

The Plaintiffs in Error are the persons named in said act, and in their representative capacity have received and now hold the amount of the appropriations made for them in said act.

The Defendant in Error is the personal representative of a devisee of Crowell Hatch (the original sufferer) who was also one of his four sons, but he does not represent any next of kin living at the date of the Act of Congress referred to.

The Supreme Judicial Court for the Commonwealth of Massachusetts affirmed the decree of the Probate Court for the County of Norfolk, in said Commonwealth, ordering partial distribution of said fund by the Plaintiffs in Error to the Defendant in Error.

The plaintiffs in error contend that the fund held by them is a special fund to be paid to the next of kin of the original sufferer living at the date of the passage of the Act of Congress referred to and can only be obtained by such next of kin as were living when the act was passed and have authorized the administrator to represent them.

The defendant in error claims that the award by Congress was made to the next of kin, recognizing the element of ownership; that the proviso rider to the appropriation act does not restrict the ownership as to property except to bar the claims of creditors in bankruptcy, and that except as to creditors in bankruptcy the awards are to be treated as assets of the estate of the original sufferer.

The questions of law raised in this case are vital in the matter of the lawful distribution by the present recipients and holders of substantially the total of the appropriations made by Congress.

The recipients in representative capacity of these awards are now, in very many States of the Union, engaged in litigation of one form and another, in order to determine the law which this case will settle. Conclusions have already been reached by the courts of Massachusetts, Connecticut, Pennsylvania, District of Columbia, and some of the other States, and the volume of litigation which must follow a delay in the settlement by this Honorable Court of this question of law is enormous.

Added to that, there is the consideration that among the very large class of persons financially interested in the awards made by Congress deaths are constantly occurring, and each death means a new complication and probably additional litigation or judicial process. The decision of this case will settle the question which forms the basis of this mass of litigation in many States of the Union, and

will relieve the judicial branch of the various State administrations from an immense amount of difficult and expensive work.

It is respectfully submitted, therefore, that this case falls within the lines marked by this Honorable Court in the case of Hoge *v.* Richmond, etc., R. R. Co., 93 U. S. 1.

It may not perhaps be improper also to suggest to this Honorable Court for its consideration the fact that the original French Spoliation sufferers and their descendants have been patiently awaiting the payment of their claims against the United States Government for almost a century, and may have perhaps earned the right to pray from this Honorable Court its early consideration of the only question which now stands between them and their reward.

FRANCIS V. BALCH,
FELIX RACKEMANN,
for Defendant in Error.

Plaintiffs in error concur in the foregoing motion and respectfully pray its allowance for reasons stated.

GEORGE A. KING,
for Plaintiffs in Error.

STATEMENT OF THE CASE.

The plaintiffs in error are administrators of the estate of Crowell Hatch, late of Roxbury, Massachusetts, deceased, and as such administrators received from the Treasury Department certain moneys appropriated by an Act of Congress on account of French spoliations, and the question here presented relates to the distribution of the fund so received. The plaintiffs in error claim that the fund should be distributed to the next of kin of Crowell Hatch *living at the time of the passage of the Act.*

The defendants in error claim that the next of kin *are to be ascertained as of the date of the death of Crowell Hatch.*

Crowell Hatch died in the year 1805, leaving three daughters and one son, and by his will, which was duly proved and allowed, all his property was given in equal shares to these four children.

There are now living descendants of the three daughters. The son, Henry Hatch, on whose estate the defendant in error is now administering, left a widow, Nancy Hatch, but no issue. He left a will, which was duly proved, wherein he made his widow residuary legatee. The said Nancy Hatch never re-married. Crowell Hatch was an underwriter, insuring various vessels against capture, which vessels were subsequently captured by the French, previous to the year 1800. These captures were among those known as French Spoliation. The claims made upon the Government on account of these spoliations were by an Act of Congress of January 20, 1885, referred to the United States Court of Claims. On the filing of petitions by claimants, that Court proceeded to investigate the cases submitted to it, and reported its findings to Congress. In the cases of underwriters like those of Crowell Hatch, the Court after finding the fact of the insurance, the capture and payment of the loss, concluded as follows, the case of the brig Mary being taken as an example of all:

"The Court decides as conclusions of law that said seizure and condemnation were illegal, and the owners and insurers had valid claims of indemnity therefor upon the French Government prior to the ratification of the convention between the United States and the French Republic, concluded on the 30th day of September, 1800;

that said claims were relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States, and that the claimants are entitled to the following sums from the United States: Henry W. Blagge and Susan B. Samuels, administrators of Crowell Hatch, for insurance and expenses, $1,050."

On the 3d of March, 1891, Congress made an appropriation in pursuance of these findings of the Court of Claims, the form of such appropriation being as follows:

Sec. 4. "To pay the findings of the Court of Claims on the following claims for indemnity for spoliation by the French prior to July thirty-first, eighteen hundred and one, under the Act entitled 'An Act to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the thirty-first day of July, eighteen hundred and one'; namely—

"On the brig Mary, Alexander Ross, master, namely Henry W. Blagge and Susan B. Samuels, administrators of Crowell Hatch, one thousand and fifty dollars."

At the end of appropriation act is the proviso: "Provided, that in all cases where the original sufferers were adjudicated bankrupts, the award shall be made on behalf of the next of kin instead of to assignees in bankruptcy, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin, and the Courts which granted the administration respectively shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards."

The plaintiffs in error complied with the requirements of this proviso by satisfactory evidence to the Court of Claims that they represented the next of kin of Crowell Hatch, and also by giving adequate security for the legal disbursement of the award, and they thereupon, in May, 1891, received from the Treasury Department a draft for the amount appropriated to them.

Nine-sixteenths of the balance in their hands was, by the order of the Probate Court, by way of partial distribution, ordered to be paid over and disbursed to the next of kin of Crowell Hatch, not including the personal representatives of Henry Hatch.

Upon a petition of the defendant in error, subsequently filed by him as administrator of the estate of Henry Hatch, the Court ordered distribution of three-sixteenths of the fund to him, on the ground that Henry Hatch was next of kin of Crowell Hatch at the time of Crowell Hatch's death.

It is out of this latter order of distribution that the present case arises.

ERRORS RELIED UPON.

The plaintiffs in error claim:

1. That the Court erred in ruling that under the proviso of the Act of Congress making this appropriation, the next of kin entitled to the fund were those living at the death of the original sufferer.

2. That the Court erred in ruling that Henry Hatch, who died without issue long prior to the passage of this Act, was next of kin within the said proviso, and that his administrator was entitled to participate in the distribution.

STATEMENT OF POINTS OF LAW.

I.

The first branch of the general question involved here is this:

Is the fund received by the plaintiffs in error, in their capacity of administrators, to be treated —

a. As a part of the estate of Crowell Hatch, or

b. As an appropriation made for the direct benefit of the next of kin of the said decedent.

The Supreme Court of the District of Columbia has determined that the grant is not to the estate of the decedent but to the next of kin.

Gardner *v.* Clarke, 20 Dist. Columbia, 268.

The Supreme Court of Pennsylvania has also so decided.

In re Clement's Estate, 150 Pa. 89.
Appeal of Bailey, 160 Pa. 391.

The Supreme Court of Massachusetts cannot be cited in favor of either proposition. The dissenting opinion in Codman *v.* Brooks, 159 Mass. 477, written by the Chief Justice, takes the ground that the creditors of the original sufferer are to be excluded from receiving the money. If this be so, it would seem to follow, necessarily, that the fund is no part of the estate of the original sufferer, but a gift to his next of kin.

The Supreme Court of Connecticut stands alone in the opinion that the fund is to all intents and purposes a part of the estate of the original decedent.

Leffingwell's Appeal, 62 Conn. 347.

II.

Assuming that the appropriation was made, not to the estate of the original sufferer, but to his next of kin, how are the next of kin to be determined?

The Massachusetts Court say that the next of kin are those *living at the death of the original loser.*

The Courts of the District of Columbia and Pennsylvania hold that the next of kin are *those living at the time of the passage of the act* making the appropriation.

The Supreme Court of Massachusetts followed, and was evidently influenced by, the first of the Pennsylvania cases (Clement's Estate, 150 Pa. 85), and the Supreme Court of Connecticut followed the Pennsylvania and the Massachusetts cases, relying strongly on the "very clear and cogent argument" of the opinion in the Pennsylvania case, which case the same Court, after a more thorough examination of the questions in controversy, has now overruled. Appeal of Bailey, *supra.*

The following is the opinion in Gardner v. Clarke, decided November 30, 189[illegible].

"The bill in this case is filed for the purpose of having the Court determine the proper distribution of one of the French spoliation awards, under Chapter 540 of the laws of the Second Session, Fifty-First Congress, entitled 'an Act making appropriations to supply deficiencies in the appropriations for the fiscal year ending

June thirtieth, eighteen hundred and ninety-one, and for prior years, and for other purposes.' 26 U. S. Statutes at L., 862.

"One Caleb Gardner originally held the claim, and by his last will and testament he gave and bequeathed all the residue of his estate to his two sons, William Gardner and Samuel F. Gardner, and his daughters, Eliza Gardner, since Mrs. Phillips, and Mary Clarke. His daughter, Mary Clarke, was half-sister of the others. Mrs. Clarke died leaving descendants who are parties to this suit. Mrs. Phillips also died, but without children, and left a will by which she gave the whole of her estate to her two brothers, William and Samuel Gardner, leaving out her half-sister, Mrs. Clarke. In order to prosecute this claim, William F. Gardner took out letters of administration on the estate of Caleb Gardner and presented this claim in the Court of Claims and obtained an award, an appropriation was made, and the money has been collected by him. He paid one-fourth of the claim to the descendants of each of the sons and to the administrator of Mary Clarke, but a question has arisen as to the disposition to be made of the other one-fourth, which would have gone to Mrs. Phillips if she had survived. The children of her two brothers claim this as a part of the estate of Caleb Gardner by virtue of his will, and of Mrs. Phillips' will bequeathing her share of the estate to them, and that this one-fourth must therefore be divided between them. On the other hand, the descendants of the half-sister, Mrs. Clarke, claim that the appropriation was made by Congress, not in payment of a legal claim which was recognized as the property of Caleb Gardner, but rather as a gratuity or bounty, and that it is limited to the *next of kin* of the original claimant, and the next of kin of Caleb Gardner are the descendants of Mary Clarke, as well as those of the two brothers. The only question, therefore, is whether this one-fourth shall be divided into three parts, two parts among the descendants of the two sons and one among the descendants of Mrs. Clarke, as the latter claim; or, shall be divided into two parts, one to the descendants of each of the brothers. The case, therefore, involves some interesting questions as to the nature of these claims and the intention of Congress in making the appropriation.

"A citizen of this country who suffers a wrong at the hands of a foreign nation does not thereby acquire a direct individual claim against that nation. He has a right to appeal to his own Government to obtain reparation for him. It makes a claim in its own name, as a national or international one, for a wrong committed

against it in the person of its citizens, whom it is bound to protect. It is the sole judge of the propriety and expediency of making the demand. If it shall deem it proper, either on grounds of right or public policy, not to make the demand, this does not give him a cause of action against his own Government. If, however, his Government does demand and receive indemnity, recognizes the private claim and provides for its adjudication and payment, then the question arises, who is entitled to the money? When changes have taken place in the condition of the original claimant or that of his estate, as where he is dead or has become bankrupt, etc., then the Courts have held that the appropriation of the money to pay the claim is not to be treated as a mere gratuity, but as payment of a claim which was property of some kind in the hands of the owner. As the Courts say, it was, at least a possibility; and, therefore, when the original claimant became a bankrupt before an award was made, so that an assignment of his estate took place by operation of law, the Courts have held that the assignment carried with it this kind of claim, and the bankrupt assignee instead of the original claimant, was the party entitled to payment. And so, also, where the claimant has died, his personal representatives have been held entitled to prosecute and recover the claim. And this is about as far as the Courts have gone in determining the rights of a party who has suffered an injury at the hands of a foreign government. Some of these principles will be found stated in several cases by the Supreme Court, as, for example, in the cases of Key *v.* Frelinghuysen, 110 U. S. 71, and William *v.* Heard, 140 U. S. 529.

"The first case in that Court in which a question of this kind arose was that of Comegys et al *v.* Vasse, 1 Peters, 193, in which the treaty between the United States and Spain, of 1819, by which the territory of Florida was acquired by this Government, it was stipulated on the part of the United States that this Government would assume and pay certain claims of its citizens against Spain, for depredations by Spanish cruisers upon their shipping, and would appoint a commission to examine and adjudicate the claims.

"An award was made in favor of a claimant by the commission so appointed. In the meantime the claimant had become bankrupt, and his estate had been assigned to his bankrupt assignee, and this assignment was held to carry with it the claim against Spain.

"A similar ruling was made in the much later case of Phelps *v.* McDonald, 99 U.S. 298, which related to a claim against the United States, growing out of the seizure of property of a British subject

during the late war, and which was adjudicated by the British Claims Commission under the treaty of Washington, and this claim also was held to have passed to the bankrupt assignee of the original claimant.

"Doubtless the same ruling would have been made as to claims against Mexico, provided for in the treaty of Guadaloupe Hidalgo, of February 2, 1848, by the 15th Article of which the United States, exonerating Mexico from all claims of their citizens, undertook to make satisfaction for the same.

"But the French Spoliation Claims would seem to stand upon an entirely different footing.

"It is well known that these claims grew out of depredations on our commerce, and illegal seizures and condemnations of vessels and cargoes, by the French, during the hostilities between France and Great Britain before the year 1800. These wrongs caused a great irritation in this country and led to a condition of quasi warfare between the two countries. This Government made a claim for reparation for these wrongs, as an international wrong, and it was met with a counter claim on the part of France, growing out of the treaty of alliance between France and the United States, of 1778, whereby the United States guaranteed to France security of her possessions in North America. At length, in September, 1800, a treaty was made between the two countries for the purpose of settling all matters in controversy between them, by which, among other things, the two Governments mutually renounced these opposing claims. The United States did not receive any money to be applied to these claims of its injured citizens, and did not stipulate, as in the treaty with Spain, to assume and pay the claims, but it simply renounced and abandoned its claim as a nation against France, in consideration of a similar renunciation, by France, of a very troublesome claim against the United States.

"The claimants who had suffered the grievances before mentioned thereupon took the ground that the action of our Government amounted virtually to an appropriation of their property to the public use, and demanded compensation of the United States. Their claims have been before Congress for many years, and have been often favorably reported on, as well as acted on, in one or the other House, and even in both Houses, but no act in relation to them has become a law by which they are recognized as valid claims against the United States. The nearest approach to it was made by the Act of January 20, 1885, 23 Statutes at Large, p. 283, which provides

for submitting to the Court of Claims the claims of persons who claim indemnity from the French Government 'arising out of illegal captures, detentions, seizures, condemnations and confiscations prior to the ratification of the convention between the United States and the French republic, concluded on the 30th day of September, 1800.'

"The Act further provided 'that the Court shall examine and determine the validity and amount of all the claims included in the description above mentioned, together with the ownership,' etc. 'And they shall decide upon the validity of said claims according to the rules of law, municipal and international, and the treaties of the United States applicable to the same, and shall report all such conclusions of fact and law as, in their judgment, may affect the liability of the United States therefor.'

"Section 6th says: 'Such finding and report of the Court *shall be taken to be merely advisory as to the law and facts found, and shall not conclude either the claimant or Congress.*'

"In other words, Congress submitted these claims to the Court of Claims for its advice as to the law and the facts, but expressly reserved the right to follow or disregard the Court's advice as they might think proper. And that Congress declined to follow the advice of the Court, to its full extent, is perfectly apparent.

"The Court of Claims held, in substance, that the action of the United States in regard to these claims fell within the constitutional provision for taking private property for public use, and that Congress was bound, under this provision, to pay to the claimants what was fairly due on their claims that had been sacrificed in the manner mentioned.

"This would make the claim property in the hands of the original claimants, transferable and transmissible like other personal property of the nature of choses in action. If Congress had concurred in the finding of the Court, as to the law, it would follow that if any original claimant had been a bankrupt, his assignee would be the party entitled to receive the award. But, in appropriating for the payment of awards, Congress has expressly provided that in cases of bankruptcy the award should be made to the *next of kin, instead of the bankrupt assignee*, thus ignoring the incident of ownership which the Supreme Court had held to attach to valid claims which had been recognized by the Government. Again, if these were valid claims as held by the Court of Claims, they would pass by a voluntary assignment by the claimant or by his will, and

would be assets in the hands of his personal representatives for the payment of his debts.

"But Congress says that the award 'shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made *represent the next of kin*.' In other words, Congress says that the money shall not be paid to the executor or administrator for the benefit of creditors, or to assignees or legatees, but only the next of kin, which involves no recognition of legal property in the award, in the original claimant.

"Now, it is obvious that Congress has placed these claims on a very different footing from those which we have before spoken of, as to which it has been held that money appropriated generally for their payment takes the same course as the other estate of the claimant. Congress has chosen to give this money a different direction. It may be plausibly said that there is no reason why Congress should prevent a claimant from bequeathing his claim to his own family, as was done in this case by a general bequest by Gardner of his estate. But if this might be done, he might also bequeath to a stranger, and if this right were conceded, it would be difficult not to concede all the other incidents of ownership, such as the right of assignment *inter vivos*, and the rights of creditors.

"And Congress may well have thought that the only consistent course was to exclude all persons from participation in these awards except the immediate family of the deceased claimant, under the designation of 'the next of kin.'

"It is not necessary, in this case, to determine whether the original claimants had a valid claim against the United States. It is sufficient, for the purpose of this case, that Congress, while apparently recognizing the losses of the claimant as the ground of a morally meritorious claim, has appropriated for it as if it were not a binding or legal claim, and as if the appropriation were more in the nature of a gratuity than of a satisfaction of a debt.

"It is entirely different from the appropriation for the Alabama claims, which the Supreme Court said, in William *v.* Heard, *supra*, was not a gratuity, and in which there was no attempt to control the distribution of the award.

"It is somewhat like the case of an appropriation to the widow or children of a decedent on account of meritorious services rendered by the latter, which were yet not recognized as giving a legal claim.

"It is not unlike, in principle, the legislation which gives to the administrator of a person whose death has been caused by the negligence of another, a right to recover damages for the injury, but confines the distribution of the damages recovered to the family of the deceased, instead of allowing them to go into his estate for the benefit of creditors.

"Now, if Congress had not appropriated this money to the parties really entitled to it, all that follows is that their claims have not been satisfied by the appropriation and still remain unsettled. But this is not money received for the use of these claimants. It is the money of the United States which Congress could appropriate as it thought proper, and the Court have no right to divert the appropriation from the parties in whose favor it was made to others to whom we might think it ought to have been given. We can only determine to whom it was given. And we have no difficulty in reaching the conclusion that it was intended for the benefit of those who were next of kin to the deceased original claimant at the time the award was made. We are glad to find that we are anticipated in this conclusion by the Orphans' Court in Philadelphia in a case to which our attention has been called. Clement's Estate, The Legal Intelligencer for November 20, 1891.

"It follows that the fund in controversy in this case, being one-fourth of the award on the claim of Caleb Gardner, is to be distributed into three parts, one-third to each son's descendants and one-third to those of Mrs. Clarke, their half-sister."

A motion was made for a re-hearing and was overruled, as follows:—

"An application has been made for a rehearing in this case. The object of the suit is to have the Court determine how one of the awards of the French Spoliation claims should be distributed among the representatives of the original claim and the Court held that the Act of Congress making the appropriation required it to be distributed among the next of kin. The application for a rehearing is made principally on the ground that the Court decided in this case that these were not just claims against the United States.

"This is a misconception of what the Court held. We did not undertake to decide that they were not just claims, but we simply held that the United States had carefully avoided recognizing them

as legal claims against the United States, and have reserved the right to deal with them as they saw fit, and undertook to distribute the money as they considered most equitable. Congress had a right to appropriate the money as they thought proper, and they appropriated it without reference to the original justice of the claim. We are bound to say that under this Act they gave it to the next of kin. We think that that is too plain for argument, and we accordingly adhere to the decision formerly made and *overrule the application.*"

The opinion in the case of Bailey's Appeal, delivered March 26, 1894, *is as follows:* —

"MITCHELL, J. This case has suffered somewhat from its intricacy and its unusual character. The important facts require to be briefly restated. The Act of Congress of 1891 awarded to the administratrix of Jacob Clement on account of his losses by the French spoliations, two sums, the net proceeds of which constitute the fund now in Court for distribution. At the date of the Act Jacob Clement was, of course, dead, and all his children were dead. There were living, however, four grandchildren, children of a son, Samuel, and thirteen great grandchildren, issue of seven deceased children of a daughter, Mary English. The questions to be determined were, who were the next of kin meant by the Act of Congress, and in what proportions were they to take? Grandchildren were the nearest in blood to Jacob of any parties living, and the learned Court below, therefore, treated all the grandchildren, living and dead, as a class of propositi, those living taking *per capita* in their own right, and the issue of those dead taking *per stirpes* in the right of their parents. From the distribution made in accordance with this view the four living grandchildren appealed, claiming, first, that next of kin in the Act of Congress meant nearest in blood according to the common law, and, therefore, that the four living grandchildren were entitled to the whole fund to the exclusion of the descendants of those deceased; and, secondly, the appellants claimed that if the principle of representation should be recognized at all, it should begin a step farther back, with the children of Jacob, and, as there were but two children, a son and a daughter, who had living representatives at all, the four grandchildren who were children of the son, should take one-half of the fund, instead

of four-elevenths which they got under the view of the Orphans' Court. Neither of these contentions was specifically sustained, but the decree was reversed on the grounds, somewhat too broadly expressed, that the Act of Congress contemplated a succession of next of kin from the person himself on whose account the award was made, and that therefore the fund should be distributed as part of Jacob Clement's estate. The case thus decided is reported as Clement's Est., 150 Pa. 82. The learned Court thereupon proceeded to reopen the case and ascertain the course of devolution of Jacob Clement's actual estate, and dispose of the present fund in the same way. From the distribution accordingly made, the present appellants, great-granddaughters of Jacob Clement, were entirely excluded because under the will of their grandmother, Mrs. English, her residuary estate went to her five children living at her death. The assignment of error to this exclusion brings up the whole subject anew of the intent of the Act of 1891 as to the persons who were to take and their proportionate shares. Further consideration and better acquaintance with the whole case have convinced us that our first views as expressed in 150 Pa., *supra*, are not sustainable, and that that case must be overruled.

"The fund was a pure gratuity from Congress, though it had a moral claim back of it that was the moving cause of the gift. It is part of the public history of the country that for more than three-quarters of a century the claims had been pressed, both houses of Congress had twice recognized them though Presidents Polk and Pierce had vetoed the Acts, and the general consensus of jurists and historians had settled down into a conviction that the claimants had been wronged by acts admitted by the French government to give rise to valid obligations to make reparation; that the United States had yielded their right of reclamation for these acts in return for other considerations from France; and that the refusal or delay in making payment of the obligations thus become a duty, had long been a reproach to the national good faith. In 1885 Congress again took up the subject, and this time the President concurring, passed an Act to authorize the Court of Claims to 'examine and determine the validity and amount of the claims . . . . together with their present ownership, and if by assignee, the date of the assignment with the consideration paid therefor.' But this was to be a mere advisory report for the information of Congress, and it was expressly enacted that 'nothing in this Act shall be construed as committing the United States to the payment of any such claim.'

The Court of Claims having favorably reported on the claim of Jacob Clement, Congress passed the Act of March 3, 1891, 26 Stats. at Large, 897, under which the present fund was received by the accountant. By this Act the money was awarded to Mary B. Scott, administratrix *de bonis non* of Jacob Clement, and it was provided that 'in all cases where the original sufferers were adjudicated bankrupts the awards shall be made on behalf of the next of kin, instead of to assignees in bankruptcy; and the awards in the case of individual claimants shall not be paid until the Court of Claims shall certify to the secretary of the treasury that the personal representatives on whose behalf the award is made represent the next of kin, and the Courts which granted the administrations respectively shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards.'

"This, as already said, was a pure gratuity. There was no right in any one which could be enforced, or which had any recognition at all in law. Congress, therefore, in making the gift, were free to make it to whomsoever they chose, and upon whatsoever terms. It was made to the next of kin, and the intent that it should go to them in their own right as standing in the place of the original claimant is apparent throughout this Act, as well as the preliminary Act of 1885. Assignees in bankruptcy were expressly excluded, and the personal representatives were not to get the money until it should be certified to the secretary of the treasury that they represented the next of kin. By unquestionable implication all other parties, assignees, devises, residuary legatees, widows, surviving husbands, etc., are also excluded. The right to the fund accrued in 1891 to those who were then the next of kin. That was the inception of the right, and those who were then dead never acquired any interest of any kind in the fund, and of course could transmit none by will or otherwise. It never was in fact part of Jacob Clement's estate, nor of his children's, nor of his grandchildren's, who died before 1891. Nor was it the intent of Congress that it should be so considered, for if it was first made *de jure* a part of Jacob Clement's estate then the power of Congress to shut out the vested property rights of assignees, creditors and others, whose claims upon the estate were fixed by law, would be at least extremely doubtful. There was not only no such intent, but such construction was carefully guarded against.

"The Act made no express provision for the ascertainment of the next of kin, or of the proportions in which they were to take.

As a matter of convenience, instead of ascertaining the facts and settling the question of distribution that we have now before us, or committing that duty to the Court of Claims, the Act passed the fund to the administratrix *de bonis non* of the original claimant, and therefore necessarily to the proper Court of his domicile, but in so doing it dictated the scheme of distribution, which was expressly to be to the next of kin, and by necessary implication such next of kin were to be ascertained by the law of the domicile. The 'legal disbursement' of the awards for which the Courts that granted the administrations were to require adequate security, can only mean disbursement according to the law of the tribunal. As was very well said by ASHMAN, J., in the first adjudication in the Court below: 'The award by the Act to the administratrix of the decedent . . . . designated the person whose losses were the efficient motive for the gift, and provided an agent for the distribution of the fund; but it pointed out the decedent not as the person to whose estate the fund was awarded, but simply as the means of identifying the proposed recipients of the gift.'

"The question of the jurisdiction of the Orphans' Court under this construction of the Act was not raised in the case, but it would not be insuperable. The ascertainment of the next of kin to a decedent, for purposes of distribution, is within the general jurisdiction of the Court, and there would be little, if any, stretch of it in including such ascertainment with reference to a fund which, though not a part of the decedent's estate, was for the purpose of ascertaining who were to take, to be treated as if it were. We are not required, however, to pass upon this point.

"The fund therefore being a gift to the next of kin, vested at the date of the Act in those then living who were the next of kin to Jacob Clement, according to the law of Pennsylvania. The appellants were his great granddaughters, and as such were entitled to participate in the distribution. The facts bring the case within the express words of the Intestate Act of 8 April, 1833, Sec. 2, Art. 4, cl. B, P. L. 316, where there are no surviving children, but grandchildren and the issue of deceased grandchildren, 'each of the grandchildren . . . . shall receive such share as he or she would have received if all the other grandchildren, who shall then be dead leaving issue, had been living at the death of the intestate;' and by clause C the issue of such deceased grandchildren are to 'take by representation of their parents respectively such share only as would have descended to such parent if they had been living at the

death of the intestate.' By the scheme of this Act when all the descendants are in the same degree they take *per capita* in their own right and not by representation, but when there are descendants in different degrees, those in the class nearest to the intestate take in their own right, and the remoter ones take by representation from deceased members of the same class as the nearest survivors. This is the plain meaning of the Act, and it has been so declared in Krout's Appeal, 60 Pa. 380; Eshleman's Appeal, 74 Id. 42 (48); and Person's Appeal, Id. 121. Distribution in the present case, therefore, should be made to the next of kin of Jacob Clement living on March 3, 1891, to be ascertained by the law of Pennsylvania in the same manner as if the fund had been part of the estate of said Jacob. The four living grandchildren will therefore each take an eleventh in their own right as the nearest of kin, and an eleventh will go to the representatives of each of the deceased grandchildren *per stirpes*. This was the distribution made first by the learned Court below, and reported in 150 Pa. 85, which maturer consideration convinces us should have been affirmed.

"As this appeal results in a redistribution to the advantage of all parties entitled under it to share in the fund, it is only just that the expenses should be borne in common, and that they should include the counsel fees of appellants.

"Decree reversed and record remitted for redistribution in accordance with this opinion. The costs of this appeal to be paid out of the fund, and to include a reasonable counsel fee to appellants, to be fixed by the Court below."

Some reasons in addition to those explicitly given in the opinions cited why the fund goes to the *next of kin living at the passage of the Act:*

I.

If the awards are to the next of kin, there seems to be no escape from the conclusion that they are to be paid to such next of kin as are represented by the administrators. This representation is to be established by evidence sufficient to enable the Court of Claims to grant its certificate. It is not that representation which inheres in the office of administrator, for such representation only applies to the decedent. Inasmuch as it is a fact to be proved by

evidence it is not a representation that grows out of the nature of the office. In this case, the administrators of Crowell Hatch do not now and never did represent Henry Hatch in law or fact. Having died long since, he cannot be represented by these administrators.

The only next of kin who can be represented, who can authorize anybody to represent them, are the *living next of kin.*

The next of kin of the original sufferer are frequently widely scattered. The practice in the Court of Claims has uniformly been, as it necessarily must be, to require proof that all these persons concur in appointing the administrator as their representative. That was done in this case. The living next of kin are, therefore, the persons represented by the administrators, and are, therefore, the persons entitled to the fund.

II.

It may be suggested, also, that it is hardly reasonable to suppose that Congress meant that one set of men should elaborately provide for this representation in order that they might be excluded from the fund for the benefit of other persons.

III.

The purpose of the Act being to discharge an equitable obligation and make an award to the living persons descended from those who lost their property for the benefit of the Government, the purpose of the proviso was plainly to prevent any payment where there were no representatives of the original sufferer to receive the fund.

There are a number of cases where there are appropriations in this Act and where no money has been or ever can be obtained because the family of the loser has become extinct, and there are no living persons to make proof of representation and get a certificate from the Court of Claims.

IV.

Of the four children of Crowell Hatch, there are living descendants of three, and they are the only next of kin. It was wholly by representing these that the administrators were able to obtain the money awarded. Henry Hatch, the petitioner's decedent, left no issue. It would have been impossible to obtain from the Government one dollar on his account.

MAR 19 [illegible]
JAMES H. MOYER[illegible]

In the Supreme Court of the United States

OCTOBER TERM, 1895.

HENRY W. BLAGGE, *et al.*,
Administrators and Plaintiffs in error,
v.
FRANCIS V. BALCH,
Administrator.
} No. 177.

BRIEF FOR FRANCIS V. BALCH, ADMINISTRATOR, DEFENDANT IN ERROR.

FRANCIS V. BALCH,
FELIX RACKEMANN,
of Counsel.